Supreme Court, U.S.
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NO:_____

IN THE UNITED STATES SUPREME COURT
WASHINGTON, D. C. 20543-0001

GÉOVING JOSEPH GÉRARD
Appellant

Versus

THE STATE OF GEORGIA BOARD OF REGENTS
And
THE GEORGIA INSTITUTE OF TECHNOLOGY
Appellees

On Petition for Writ of Certiorari
To
THE US 11 CIRCUIT OF APPEALS
DOCKET NO: 08-15400-F
AND
THE US ** CIRCUIT OF NDGA COURT
DOCKET NO: 1:07- CV – 00109 - CC

PETITION FOR WRIT OF CERTIORARI

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THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543-0001
DOCKET NO:

QUESTIONS FOR REVIEW:

1. Should US Court Judges base their opinions on State Employment Opportunity Commission Statutes or should they base them on the US EEOC investigation reports and recommendations?
2. Is it highly customary for a judge to make his judgment on JUDICIAL ECONOMY without taking into considerations any of the myriad of palpable information presented by one party, [such as the Appellant/Plaintiff], in the support of his charges or on the other party's, [such as the Appellee/Defendant], summary judgments while denying the Appellant the right to a jury trial where that party could

cross-examine and challenge the affiants on unfounded allegations made on sworn affidavits against him by Appellees' witnesses?

3. Can the US Supreme Court take into consideration a law, [such as the Lilly Ledbetter Act of 2009], that has been ratified as it reviews the opinions the lower courts have formed in the case?
4. Should a US Agency such as EEOC deny or refuse to issue a copy of its investigation findings to the person who, in the first place, filed the charge?
5. Should a US Agency such as EEOC enter itself as a party to a case in order to justify to the court its reasons to refuse to give to party the copy of investigation files on the basis that it believed the party was trying to jump ahead with the Discovery process of the case?

6. Should a complainant not have a right to receive a copy of the EEOC findings on charges he brought before the Agency against his employer, irrelevant of his decision to take or not to take legal action against his employer?
7. Does any employer have the fair and legal right to refuse to produce, upon request, a copy of the personnel file to a terminated employee litigating pro se and trying to timely prepare and submit his Discovery Report IAW with the Court's strict schedule?
8. Should the State Attorney General Office of Legal Affairs that is defending a charge brought by a disparaging employee of one of its agencies, charge the employee for copy of his personnel file that his employer refuse to produce after many requests and for copy of investigation files for complaints he filed with

EEOC and that EEOC produced to SAGOOLA?

9. In the event the SAGOOLA has the right to charge the Plaintiff for such copies, should it not make it clear to state the cost at the time it made the offer to help the Plaintiff with acquisition of copies of his files so he could decide as to whether or not he should accept the offer?

10. In the light of Civil Rights Act and that of Fair and Equal Pay Act, would you, as the highest court in the land, please review the opinions of the lower courts in this foregoing matter?

11. Should a Plaintiff have to incessantly [3 out of 4 words in his complaints] whine about the discrimination he was subjected to in order for

a judge to believe and act on the fact that he was discriminated against?

12. How many pieces of plausible documents; palpable information such as e-mail messages, memorandum, name of other employees being treated more favorably than a Plaintiff was treated under the same conditions; that he needs to provide to the court in order to convince the judge that he was unfairly discriminated and retaliated against?

13. Should the State Attorney General's legal staff, which has jurisdiction over all state judges and courts in his state court system, on representation of one of its State Agencies against a pro se litigant; have a need to know all of the cases (past and current), court locations, and all related legal matters that

said pro se litigant, being deposed, ever initiated in his life time?

14. Should a Pro Se litigant, being deposed, have the right to invocate his Fifth Amendment right, when asked questions for which he would not like to answer on deposition, without being coerced by the State Attorney General Office's legal staff?

CORPORATE DISCLOSURE STATEMENT

No corporate disclosure statement is applicable to this case.

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STATEMENT OF THE BASIS FOR JURISDICTION

This court, by virtue of being the Supreme Court of the United States of America, has absolute jurisdiction over this matter being put before it for review of the opinions stemmed from the US NDGA District Court and from the US 11th Circuit Court of Appeals since these two above-named lower courts had jurisdiction in accordance with the Civil Rights Act of 1964 under Section 2000e-3 [section 706] "for purposes of sections 1404 and 1406 of Title 28 of USC the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought".

CONSTITUTIONAL PROVISIONS< TREATIES< ETC...

Appellant's Civil Rights with respect to Race, Age, Sex, National origin, Failure [to hire and or to promote] discriminations and retaliations; under the Constitutionality of the Civil Rights Act of 1964, the amended versions of said Act, the Lilly Ledbetter Act of 2009; have been severely violated in spite of the fact that he had made it known to his employer by way of complaints to State and Federal Commissions and by written memos to his superiors in the chain of commands that he was within the "Protected Activity zone.

STATEMENTS OF THE CASE

ENTRÉE OF CERTIORARI WRIT OF APPELLANT:

ON APPEAL FROM:

THE US 11 CIRCUIT OF APPEALS
DOCKET NO: 08-15400-F App1
AND
THE US ** CIRCUIT OF NDGA COURT
DOCKET NO: 1:07- CV – 00109 – CC App2

INTRODUCTION

By this writ, the pro se Appellant's purpose is to expose to this High Court [hereinafter HC] his understanding of the reasons the lower courts systematically arrived at their opinions and affirmation.

Then, he wants to walk the HC down the erroneous paths, which led the lower courts [LC(s)] to their opinions and affirmation and he intends to; step by step, event by event, circumstance by circumstance;

point to this HC misgivings v. actual happenstances, omissions v. additions with reasoning explanations, preponderant evidences and sufficient supporting precedents that this HC will need to unabashedly override the lower courts opinions and affirmation in order for the HC to upright the wrong, straighten the curve laden with faulty information filled with misguided pretenses, omissions and pretextual arguments, which were fed to the LC(s) and that said courts used to arrive at their opinion and affirmation. In closing, the Appellant will enumerate the reasons that this HC should grant his writ by overturning the misinformed LC(s) opinions and affirmation.

STATEMENTS OF THE ISSUES WITH:
DOCKET NO: 08-15400-F

This lower court erred in its conclusive opinions because it arrived at it final order based on the information it received from the Defense Team [DT]

and or with assistance from its [the DT's] Appellees. Said information contained numerous pretextual arguments, manipulative statements taking out of context, erroneous data with regard to timeliness and or statute of limitations on complaints the Appellant filed with GCEO and EEOC, 11 uncontested sworn affidavits[1] against the Appellant, countless omissions of matters relevant to the charges brought forth by the Appellant and oversight that Appellant had 300 days to file his charge with EEOC due to the fact that his employer was a State Agency, required to operate within jurisdiction of US fair employment practice.

The facts are and remained unchanged as presented by the Appellant, who began working as a laboratory student assistant for EES, now GTRI around April 1983. He applied for and was hired as a full time

[1] See Appendix No. 5 Ref No. 5

Chemical Technician I, in October 1985. He was promoted to Chem Tech II in 1989.

In 1995, he learned that GTRI had been experiencing difficulties to contain ever spiraling costs in administering the package chemical gas cylinders used by its, then, 9 research laboratories. The Appellant offered his assistance with condition that he would be the person to run the program he was proposing. With some hesitation on the part of management and convincing explanations by the Appellant, management finally decided to let the Appellant run a pilot program as a test.

In May 1995, the Appellant, designed, tested and implemented a software program to procure, to make payments using a State of GA issued purchasing card and to track every chemical gas cylinder that entered

and exited the GTRI chemical gas cylinder inventory system in order to prevent any loss of cylinders. He also made all redistributions of internal funds used from various sponsor projects, reconciled the bank EOM statements, updated the GTRI online accounting system and submitted supervisor-approved EOM hard copy reports to the GTRI accounting department. He was the sole interface with the vendors. He handled all disputes, credits and back billing issues for all GTRI and some GIT academic end users. Henceforth, Appellant was no longer a Chemical Tech II. On occasions, he assisted in that capacity, but his time was pretty much consumed by the newly established and above-described coordinating program. He should have been reclassified without asking. He began to request for reclassification to deaf ears of his various supervisors who evaluated him annually over the

course of 7 long years. He did not get reclassified until, he found, after being 13 years[2] in his Chemical Technician II position, that in order to be reclassified in GTRI, the classified employee had to initiate the paperwork her/himself; whereas there is a yearly e-mail reminder to each professional employee to submit paperwork for reclassification/upgrade. He completed and submitted the reclassification paperwork to his supervisor, Mike Harris, who, together with him sat with the personnel support team, Ms. Terry Bridges, to discuss the application and they made recommendation for the appropriate grade level that the Appellant should have been reclassified to after 7 years in his current job and 13 years since he was last reclassified.

[2] See Appendix No. 5 Ref No. 10

They recommended his reclassification title to be "Program coordinator II". At the personnel support team suggestions, all corrections were made in accordance with her recommendations. The final document was signed by Appellant, his direct supervisor, Mike Harris, and the then EOEML Laboratory Director, Gary Caille, prior to submitting it to the Personnel Support Team, who ultimately forwarded it to HRD for processing. There, the HRD personnel, Nancy Farr, who processed the application decided to downgrade the title to Program Coordinator I on the basis that she could not find any other person in the GIT organization who does a similar job to that of the Appellant [Doc. 71, ex. 54].

It was normal, because the Appellant created the position to solve a serious financial problem

confronted by the organization. In return, the Appellant did not receive the proper salary increase and subsequently, the HRD personnel decided upon herself to only give him a 3% increase over his salary of 13 years as a Chemical Technician II's salary in lieu of the 15% increase he should have received for going from grade pay point 108 (Chemical Technician II) to 111 (Program Coordinator I)[3]. A top of that, he was to receive a State of GA awarded cost of living adjustment of 5% that the Personnel Support Team had badgered his supervisor to deny him that COLA via e-mail and his supervisor did[4]. Evidences on all these allegations were submitted to the trial court in 22 support documents and 92 exhibits of Doc. 71. **These allegations are pretty much in line with those made by Lilly Ledbetter, which were**

[3] See Appendix No. 5 Ref No. 10

[4] See Appendix No. 5 Ref No. 10

supported and approved by Congress, vetoed by President George W. Bush, then signed and ratified by President Barack H. Obama earlier this year.

On 08/03/2004, Janice Rogers, Administrative Vice-President of the Appellee, Georgia Tech Research Institute [hereinafter GTRI] of Georgia Institute of Technology [hereinafter GIT] asked Appellant, in an email to represent GTRI in a search group to find a service that was to track hazardous chemicals across the GIT campus. Subsequently, in live meeting, **Appellant asked and Ms. Rogers assured him that he will be the GTRI coordinating arm of the GIT campus wide program when a service is found**. After the search was completed, on 06/16/2005, Ms. Rogers decided to, **discriminately**;

take adverse action[5] by giving that position to a **younger** white male, Paul Hawley (Doc. 71 Ex. 30). The Appellant replied to say that he was not surprise because GTRI is a place where the donkey works while the horse grazes. **That Appellant's response was used as the retaliatory basis for the Appellant's termination.**[6] Incidentally, that was the second time, at GTRI, the Appellant had done the arduous work and someone else of a different race and or sex received the rewarding promotion. His supervisor, Mike Harris; as he verbally expressed his feelings and thoughts while Appellant signed the termination letter in the presence of the GTRI PST personnel, Terry Bridges; confirmed on 05 December 2005 that Appellant's correspondence with Ms. Rogers over the summer was the reason for his

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[5] EEOC's Compliance Manual Section 8, Chapter II, Part D.
[6] See Appendix No. 5 Ref Nos. 6 & 7

termination. He asked the Appellant if he had not seen it coming[7]. The Appellant said no. Then, the Appellant said that he was just a few months away from reaching the age of 60 when he could begin collecting his pension, he [Mr. Harris] vowed to assist Appellant at finding employment on campus before his remaining time in his office runs out on 02/01/2006. **This is proof enough that Appellant was not terminated for lack of funding but by retaliation[8].**

On 12/05/2005, Appellant was given his first termination letter on the pretext of lack of funding.

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[7]See Appendix No. 5 Ref Nos. 2 & 10

[8]**Retaliation**

Under federal law (Title VII), retaliation occurs when an employee is fired or has his/her terms and conditions of work changed as a result of making a formal complaint of discrimination. Title VII also protects those individuals who testify, assist or participate in an investigation of illegal activity or those who oppose unlawful employment practices.

That same day, his supervisor sent out e-mail throughout the campus to seek new position for him on his promissory effort to help him to find another position on campus so that he could complete his career until at least his 60th birthday. Furthermore, Mike made meeting arrangement with the GIT HRD Employment Director, Debbie McCloud, to discuss employment opportunity with the Appellant and her on 12/06/05.

On 12/16/05 and on 01/03/2006 Appellant filed complaints with GCEO. The Appellees claimed those complaints he filed with GCEO were dismissed for lack of timeliness. There would have probably been if Appellant were to file his suit in a State of GA Court. The argument would have been correct if the Appellant was not a State of Georgia Employee.

However, the first information noted on US EEOC charge questionnaire[9], **a State Employee has 300 days after the alleged unlawful practice had occurred to bring a charge before EEOC. Wherefore, Appellant was timely with regard to filing his complaints with EEOC and he should be entitled to equitable exception on timeliness because he worked for the State of GA, which is within the jurisdiction of a Fair Employment Practice Agency,** SEC2000e-5 [Section 706(e)(1)]. That was the reason the GCEO, by established regulations, forwarded the Appellant's complaints to US EEOC that had jurisdiction over them. US

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[9] * A charge must be filed with the EEOC within 180 Days after the alleged unlawful practice has occurred *[but after]* (**300 days, if the employer is within the jurisdiction of a Fair Employment Practice Agency- If you are a state employee** or you worked in Richmond County).

EEOC investigated the charges and issued permission-to-sue letters for the Appellant to file his suit[s] in US District Court.

On12/19/2005 Appellant appealed his termination to Elizabeth Neely of the State of Georgia Board of Regents and around 17 January 2006, he sent a letter (started and dated on 12/25/2005) to Stephen Cross, the Director of GTRI, detailing the way things were being handled by the three long established women who administered key positions in the GTRI organization, comparing his feelings to the oppressed ones he lived with in his native country under the leadership of [Papa Doc] Duvalier's militia group, complaining about discrimination in GTRI, expressing in great details his historical and personal work experiences at GTRI, describing how he was not permitted to take classes while others, under the

same supervision, were allowed to take classes to advance their education in the hope of escalating the economic ladder[10] and he requested an investigation into the events leading to his termination. In other words, he was being truthful about his feelings in the light of his disparaging, discriminatory and retaliatory circumstances. In the letter to Mr. Cross, the Appellant inserted the complaint he filed with Ms. Neely at the office of Legal Affairs of the State of Georgia Board of Regents. **There could not be any doubt in anyone's mind that, without nagging and repetitious whines, the Appellant was complaining about being unfairly discriminated against.** Reynolds v. Golden Corral Corp., 106 F. Supp. 1243, 1253 (M.D. Ala. 1999); Garcia-Paz v. Swift Textiles, 873 F. Supp. 547, 560 (D. Kan. 1995); Yanowitz v. L'Oreal, 36 Cal 4th 1028,

[10]See Appendix No. 5 Ref No. 10

1046 (2005) A copy of the memo to Mr. Cross was sent to GIT President, GIT HRD and GTRI PST record keeping offices, Appellant's direct Supervisor and Secretary. Mr. Cross never produced a reply to his request and apparently never conducted an investigation. Furthermore, Appellant made a request to GIT President for a procedural redress meeting. Said request was never granted.

Between 12/05/2005 and 12/19/2005, Appellant's supervisor, Mike Harris, had met with the SENSIAC Directors, who assured him they had work assignments to keep the Appellant employed. On 12/19/2005, the Appellant was invited to the SENSIAC's Christmas luncheon. There, for the first time, he met with Dave Schumaker and Ann Batchelor, respectively Director and Deputy Director of SENSIAC. They talked to him about the work

they will have for him to do and welcomed him to the group. After the meeting, Ms. Batchelor gave him a tour of the work area, introduced him to the personnel who were present and specifically introduced him to Ms. Jennifer Tate who will be assigning to him, the work he will do for the group. Ms. Tate and the Appellant agreed to start working collaboratively after the holiday seasons since the campus was going to close for the week of Christmas.

Effectively, in the early days of January 2006, Ms. Tate sent to the Appellant an e-mail containing his first assignment [Doc. 71, Ex. 34]. In the days that follow, there were talks about security clearance requirement for the Appellant. Appellant communicated that he had current security clearance through the AFRC for 25 years. SENSIAC and GTRI personnel requested his social security via e-mail.

He submitted it and the GTRI security team, which together with Ms. Batchelor involvement went online to seek, to find, to download, to acquire and "to own" the Appellant's security clearance. Appellant was then asked to schedule and to attend the GTRI security briefing. He did so [Doc. 71, Ex.33]. In the interim, he had carried out and had completed, successfully, his issued assignments with praises from Ms. Tate, he attended scheduled laptop computer security training, was waiting for ordered equipment to begin training on laptop computer memory [Doc. 71, Ex. 47],while getting acquainted with Dreamweaver [web authoring and developing software] and Sure Thing CD/DVD [labeler generating software] loaded on his office computer so he could leap into the next wave of assignments he was promised via e-mail with verbal promise to absorb him full time. Above that, he was asked and

agreed to assist with an upcoming SENSIAC Symposium to be staged in Florida [Doc. 71, Ex.42]. For Ms. Batchelor to deny having knowledge of all those happenstances in her small and women-intensive department when she received e-mail copies on all communications regarding the Appellant involvement with SENSIAC is **highly pretextual** [Doc. 71, Ex.35]. Batchelor was never directly contacted by the Appellant for any position. Appellant's supervisor, Mike Harris, made all the arrangements. Post 12/19/2005 meeting between Batchelor and the Appellant, all his interfacing contacts with SENSIAC were made through Ms. Tate. The Appellant did not know Batchelor until he was introduced to her on 12/19/2005.

In a meeting on 2/6/2006, Batchelor proceeded to inform the Appellant that in light of his unresolved

grievance in his personnel file, she would not employ him and, abruptly, she halted all assignments and rescinded the promise to absorb the Appellant full time on a series of totally unfounded pretexts that she claimed to base on the directions by the GTRI Personnel Support Director, Jim Beisner, and that of Laboratory Director, Gisele Bennett; to review the Appellant's personnel file: in which she said to have come across of Appellant's December 2005 letter to Mr. Cross that dismayed her so much by his "unprofessional and unnecessarily hostile" tone [*thus creating* [for Ms. Batchelor] *a close temporal proximity between protected conduct and adverse employment action*[11], *which actually yielded sufficient circumstantial evidence to create a genuine issue of material fact as to causal connection* Gupta v. Fla.

[11] see EEOC's Compliance Manual, Section 8, Chapter II, Part B - Opposition

Bd. of Regents, 212 F.3d 571 (11th Cir 2000)]; and she was especially bothered by the Appellant's reference to a "long established and very powerful **[triumvirate[12] of women]** meaning [government composed of and/or shared by three bodies, groups, leaders, branches (such as the Executive, Judicial and Legislative branches that form the US Governing body)], by his comparison of GTRI to the militia group of Papa Doc and by her assumed belief that Appellant harbors animosity towards women, which largely comprised in her group. When in fact the Appellant, the oldest of nine siblings including 5 sisters, grew up in a close knit family filled with two grand-Mothers, mother, a host of aunts, and cousins; attended co-ed lyceum, has more female than male friends across racial lines and ethnic backgrounds,

[12] A composite Latin word where **trium** derived from trio meaning **three** and **virate** from virare meaning to **steer**

married twice, currently married to a Philippina for 17 years, a doting father of a 15 years old son and two daughters, 23 and 9 years old, worked in collaboration with and under the supervision of women in his civilian life and during his 26 years span of military career with AFRES; never in any instances, he had any sort of problems with women until being accused as a someone who harbors animosity towards women by a woman who hardly knew him for less than three months and with whom he had only two meetings. **These were purely and skillfully articulated scare tactics and pretexts induced by the defense team to implant fear in the mind of the court in order to steer it away from staging a full jury trial for the case and to steer the court towards adoption of the defense team's summary judgment.**

Ms. Batchelor knew too well that the Appellant is neither unbalanced nor a threat to anyone, women especially. Matter of fact, he wrote her a letter, [Doc. 71, Ex. 56], **not to apologize** because he used her name and that of Mr. Woodall's as points of reference in his retaliation complaint against the GIT and GTRI for [her] having to spontaneously rescind his scheduled work assignments with SENSIAC[13] and

[13] SENSIAC is a US Military Sensing Information Analysis Center, under a 10 year-contract with GTRI\ [EOSL, the laboratory where the Appellant worked for during his 24 year-career with the Georgia Institute of Technology]. SENSIAC is a **cash cow operation** for GTRI\EOSL. It strives on fees that it charges to attendees for partaking in its Symposia where it generates its own self sustaining funding. It is immune from lack of funding. It is a refuge for many researchers and project directors who resided their posts for a secured and non-pressured position in SENSIAC and a section where certain employee's family member(s) such as: Mr. Arrington (son of the EOSL Accounting group and many terminated employees, such as: Ms. Sarah Andrews (now retired), David Tate (husband of Jennifer Tate) and Ms. Sheree Colestock among others found

for [him] to retract the funding approved, days prior, by Stephen Cross, GTRI Director, under a specifically designated project number H-2300-444 belonging to the Director's office internal project; **but to** share with ,them his explanation of the why he mentioned them in his complaint. Reason being, he knew within himself with a high degree of certitude that they did not make those awfully synchronized decisions alone. They acted under orders from upper management.

In what concern, Stephen Woodall, Director of GTRI Research Security, when he was contacted by Appellant's Supervisor, Mike Harris, he requested specific information about the Appellant in order for

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employment after being let go by other GTRI laboratories. Incidentally; Mr. Tate, Mr. Arrington and Ms. Colestock; among many who are still employed with GTRI\EOSL\SENSIAC at their full salary plus cost of living allowances and pay increases from the organization

him to meet directly with Mr. Stephen Cross, Director of GTRI, to lay his request for funding to pay the Appellant for urgent services he needed done in his department. Everything he asked of Mike Harris was given to him promptly [Doc. 71, Ex.72]. His meeting with Mr. Cross was successful and Mr. Cross gave him a charge number from his office for the Appellant to charge his time to [Doc. 71, Ex. 49]. Nothing could be clearer and more positive than that. The sudden withdrawal of the funds before Appellant could even begin performance of the assignment was nothing other than a **pretext** to strangle funding, the life line of his employment in order to halt his employment, to expel him from the organization and to bar him from future opportunities within GTRI and on the GIT campus. GTRI is very powerful organization with a lot of pulls well beyond the GIT campus because it has its tentacles deeply imbedded

in local, national and international governments and industries because of the services it provides to their community at large. At times, one may think that organization floats above the "Dura lex sed lex".

On the 02/08/06, the Appellant requested and was granted a meeting with Mr. Jim Beisner, Director of the GTRI Personnel Team. In that meeting, Mr. Beisner assured the Appellant that there existed no, per se, Institute Policy, which precludes any employees from doing work on campus because they have requested to have certain documents into their personal files. The Appellant communicated that opinion of Mr. Beisner with his supervisor, Mike Harris [Doc. 71, Ex.53].

On 02/13/06, the Appellant file a retaliation complaint with Ms. Elizabeth Neely[14], of the office of Legal Affairs of the State of Georgia Board of Regents [Doc. 71, Ex. 56 (last 2 pages)]. He noted that:

"Clearly, by all latitudes, my employee rights have been violated.

The law, which protects me against retaliation, has been transgressed.

Therefore a serious and flagrant breach of State law has been committed.

Wherefore, all I can do is to ask that those matters be reviewed and redressed."

There couldn't be any doubt in anyone's mind that the Appellant was talking about being

[14] See Appendix No. 5 Ref No. 8

retaliated against. That his expression was a cry for help against the anti-retaliation provision of the Title VII of Civil Rights Acts of 1964[15] and more recently the Lilly Ledbetter equal rights of 2009 he was subjected to by his employer. Ms. Batchelor **made it clear that she did not retract the assignments from the Appellant because of lack of funding** [Doc. 71, Ex. 36]; but, because she based her decision on her self-formed opinion about the Appellant's linguistic expressions and she perceived the Appellant as someone who bore animosity towards women that made up a large portion of her group. That is an unsubstantiated argument and an unsupported pretext since the Appellant never had, over the span of his life, any recorded incident with women of any race, religion, creed, color, sexual preference or national origin. Au contraire,

[15] See Appendix No. 5 Ref No. 4

throughout his life time he has always been and still is highly respectful of, well respected by, got along well with, and worked very well with everyone [men and women] including Ms. Batchelor and members of her staff.

Before and after the Appellant left his office on 03/06/2006, he applied for at least 17 positions with the institute in an effort to find a post that he could hold onto until, at least, age 60, when he could apply for his TRSGA pension. Some of the positions were even suggested by Ms. Bridges [Doc. 71, Ex. 51], Associate Director of GTRI Personnel Support Team who, on two occasions [12/05/05 and 03/06/06], handed the terminations letters to the Appellant in the presence of his supervisor, Mike Harris. The same Ms. Bridges went on to interview and to hire Ms. Palla Smith, a younger black female, for a

position in GTRI that she knew the Appellant[16] was very well qualified for and was highly capable of handling. However, she chose to veil her decision not to even interview him under **the pretext** that Ms. Smith's résumé of qualifications indicated that she had experiences in reviewing sponsored contracts, working with various government forms and being able to read and understand sponsored contracts. When in fact, Ms. Smith's résumé failed to plausibly conjure all those facts and whereas, the Appellant[17] who, holds a dual degree in Computer Information

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[16] a 24 year veteran of the Institute with the intellectual capability to mastermind and to [flawlessly and successfully] administer a software program, which saved GTRI a lot of money and heartache over a period of 11 years (1995-2006)

[17] At the time, a 25 year veteran with the US Air Force Reserve where he handled many situations, which dealt with various government forms that by the way are online and with detailed explanations and instructions on how to complete them.

System and Management with strength in accounting, was well positioned for and was imbued in the Institute-setting [pre-requisite for this position] for 23 + years with GIT to serve as "an interface for contracts between labs, government agencies, and other departments and monitoring the implementation of databases to ensure compliance with contract requirements". Bridges had full knowledge of all of the Appellant's educational background [Doc. 71, Ex. 76] because all of the appellant's educational credentials, nominations and awards were in his personnel files at the EOSL, at the GTRI PST and at the GIT HRD respective record keeping offices; and she knew the Appellant was in protected age range with respect to Civil Rights Acts laws in terms such as age, race, gender and sex among others. [T*hus creating* [for Bridges] *a close temporal proximity between protected conduct and*

adverse employment action[18]*, which actually yielded sufficient circumstantial evidence to create a genuine issue of material fact as to causal connection* Gupta v. Fla. Bd. of Regents, 212 F.3d 571 (11th Cir 2000)] Bridges had wrongfully noted her reason for not hiring the Appellant and the Court erred in supporting the notion that the Appellant was not chosen for the position given to Smith because he had less relevant job experience and that Appellant "lacked experience in managing contracts and subcontracts[19]. **That pretext would have been excusably acceptable if Bridges had taken the time to interview the Appellant who believed that his terminations where ordered from administrative ranks much higher than that of**

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[18] see EEOC's Compliance Manual, Section 8, Chapter II, Part B - Opposition

[19] The government contract forms referred to in this foregoing action case are online with step by step and line by line instructions on how to complete them. Something that Appellant had done times and times again during the course of his military career and in his civilian life

Bridges. Appellant sought out to confirm his belief by applying for so many positions, in the one hand with the hope to be hired so he could continue employment with the Institute until he, at least, reached age 60 [prerequisite to drawing his pension from the Teacher's Retirement System of Georgia] and in the other hand to observe whether he would receive reply to any of his applications or be granted an interview for any of the 17 positions he applied for. The Institute and the GTRI failed the Appellant's tests miserably.

In both termination instances, the Appellant's termination letters stated that he was fired for reason of **"Lack of Funding"**. In the first instance, he was disparagingly terminated on the broken promise of Janice Rogers, GTRI Administrative VP, to assume, in addition to his regular duties, the

administration of the GTRI's arm of the GIT CHEMATIX System that regulates the traffic of hazardous chemicals that are used throughout GIT and retaliated against for the reply he produced to Ms. Rogers' e-mail in which she announced her decision to give the promised position to Mr. Paul Hawley. He [the Appellant] did not have any lack of funding in the GTRI annual budget, for the fiscal period of Jul 1 2005- June 30 2006, program that he was coordinating at the time of his first termination. In fact, he had a surplus in his mid year open balance.

In the second instance, it was evident that Batchelor's e-mail[20] of 1/24/09 clearly refuted the

[20] Mike. We had planned to use Geoving fairly extensively. I have since reviewed his personnel file as usual when anticipating using someone at least half time. Frankly I am disappointed shocked dismay. I must admit

assertion of **"Lack of Funding"**. SENSIAC had the funding to pay the Appellant for the written assignments it promised for a few months at, at least, 50% of the Appellant's time and for fulfilling its verbal promise to absorb him fulltime as time progressed like it did for some terminated employees of GTRI such as Sheree L Colestock [younger white female]--- , Sara Andrews [older white female] and Duane C. Tate [older white male] and husband of Jennifer Tate, Administrative Manager I of SENSIAC; other employee from academic side of the campus such as: Elaine Young [much younger black female], who was trained along side with the Appellant for SENSIAC assignments, which require security clearance and from outside hiring, among

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I now have some serious concerns which will require further discussion with you and Geoving on my return. Are you available next Monday?----

----------Sent from my Blackberry Wireless Handheld

others, Mr. Arrington [very young black male], a Human Resources graduate and the youngest son of the EOSL\SENSIAC's Accounting Department Manager, Dell Arrington. The Appellant was actually terminated in retaliation for the complaint he earlier filed with EEOC by way of GCEO against the Institution for the discriminatory termination he was the subject of on 12/05/09 and for complaint of retaliation he filed after Ms. Batchelor had retracted all his current assignments and promise to absorb him as a permanent employee in the future.

The GTRI 2005 Annual Report, presented by Mr. Stephen Cross, testified that GTRI did not have any financial problems whatsoever. In fact, he stated that the GTRI group received a surplus of $3.5 million in sponsored research dollars over the previous physical year, 2004, awards [Doc. 71 Ex. 41].

The retaliatory, discriminatory and disparate actions of Ms. Janice Rogers by way of Ms. Brenda Hill in the 05 December 2005 wrongful termination and the retaliatory action of Mr. Stephen Woodall and Ms. Ann Batchelor in the 06 March 2006 have caused grave, harmful and irreparable "adverse employment actions"[21] to the then 58 years old Appellant. He had to scramble to find health and dental coverage for his family. He shifted coverage of health to his wife's employer and had to pay out of pocket for his family dental insurance to United Concordia since he was still an active member with AFRES. Because of his age, he was no longer able to find employment to economically contribute to the livelihood of his young family (6, 12 and 19 yrs old children and his 44 yrs old wife at the time of termination). Because he was

[21] See Appendix No. 5, Ref Nos: 2, 4, 6, 7 and 10

not able to contribute to his social security funds for the 4 years that preceded his forced early retirement at 62, he ended up with a reduced retirement income that will forever impact his economic life. Also, because he was no longer able to contribute to his State of Georgia Teachers' Retirement funds, he ended up with a much smaller life long retirement pays that he was forced to take at age 60. Since his wrongful terminations, he depleted his family savings and funds set aside to assist with his children's education so he could complement his wife's salary in order to make ends meet. On 28 October 2005, GIT OHR completed employment verification for the Appellant in order for him to refinance his house so that he could get the down payment to replace his car that was totaled in a collision with a deer [Doc. 71 Ex. 58, item 11 "probability of continued employment: GOOD"]. On

05 December, five weeks later, he was terminated. Today, he is struggling to keep the roof over his family's head in the current economic situation [Burlington Northern & Santa Fe Railway Co. V. White, 548 U.S. 53 (2006)].

STATEMENTS OF THE ISSUES WITH:
DOCKET NO: 1:07- CV – 00109 – CC

The issues with this case are very similar to those visited above that were before the Court of Appeals. The difference comes from the fact that certain older issues of discrimination were not addressed or left out at discretion of the Attorney who represented the Appellant before the Court of Appeals.

Those issues were more of discriminatory in nature than they were of retaliatory. Nonetheless, they, too, have "adverse irreparable effects" that will forever mar the economic ladder of the Appellant and those

of his family members for the rest of their terrestrial life.

The opportunity to attend free accounting classes offered by the Board of Regents was denied to him on the basis that the classes were not in line with his job description. But his supervisor allowed his secretary, a younger white female, to attend the classes which were not in line with her job description as well [Doc. 71 Ex. 83].

The same supervisor barred him from taking classes to complete his engineering degree program while working full time for GIT on the basis that he needed his presence in the lab during all working hours of the day [Doc. 71 Ex. 63]. He offered to make up for the time he would take up for classes at the end of the day or even on weekend [Doc. 71 Ex. 62]. His offer was flatly rejected. He phoned the HRD office and inquired on the number of class hours a full time

employee is allowed to take while working on campus. He was told that the employee could take as many hours as his supervisor would allow him to take.

He scheduled a meeting with his direct supervisor and his Laboratory Division Chief. He told them of his findings from the HRD personnel. The Division Chief told the Appellant's direct supervisor that the final decision will be at his discretion. His [Appellant's] direct supervisor stated that his original decision was irreversible, although the school director had approved Appellant's for re-admission [Doc. 71 Ex. 64].

However, his supervisor allowed a younger white male, who had followed him from his previous employer, to attend classes until he completed his doctorate and moved on to better economic life

opportunities [Doc. 71 Ex.65, his STRAP was approved , but he was not able to use it].

In 2005, Mr. Ken Johnson; interim lab Director of EOEML, precursor of EOSL and later closed HESL; sent a lab wide e-mail in search for someone to take on an internal duty being vacated by a transferring employee. Instantly, Appellant supervisor replied to recommend that Appellant would serve the lab well in that capacity. A few days later, another event that took place prompted the Appellant's supervisor to reiterate, via e-mail, his recommendation of the Appellant for the post and in addition asked when do you want him to start? Mr. Johnson, never replied to any of the Appellant supervisor's e-mail recommendations for taking on the lab duty he [Mr. Johnson] advertised and never filled the position before Ms. Gisele Bennett was appointed to be

permanent lab director of EOSL and Mr. Johnson himself became Director of HESL [Doc. 71 Ex. 52]. Strangely, Ms. Bennett chose to appoint a younger white female, Ms. Myers, the Secretary for the EOSL work group that the Appellant worked for. Ms. Myers had very limited experience in how to administer that duty. She consulted the Appellant to ask him if he would want to take on that duty before she informed Ms. Bennett in an upcoming meeting in which she planned to renounce her appointment that she did not wish to take on that assignment and would like to recommend the Appellant who was willing to carry it out. Ms. Myers did just that but Ms. Bennett insisted that Ms. Myers must take on the task. Therefore, Ms. Myers took on the task and the Appellant provided whatever support that she needed to fulfill her new task.

In last days just before the Appellant left his employment as prescribed by his second letter of termination, Ms. Myers requested approval of Ms. Bennett for charge number to pay for Appellant's time to train her on certain aspect of her newly forced upon task. Ms. Bennett approved the request and the Appellant provided to Ms. Myers, the knowledge she sought after.

The irony was neither the interim lab Director, Mr. Johnson, nor the newly appointed lab Director, Ms. Bennett wanted the Appellant in that position, which would have obligated the lab to commit more financial backing to his position. It appeared that there existed some level of covet corroboration between upper management and the lab directors [interim and newly appointed] to squeeze and flush the Appellant out of his position.

In other words, the playing field in terms of race and sex was not at the same level for the Appellant as was for his counterparts' full-time employees under the supervision of the same manager. As observed by the Supreme Court in Mitchell, 361 U.S at 292 *"it needs no argument to show that fear of economic retaliation" might induce employees "quietly to accept {unlawful} conditions."*

Those instances were very disparaging and they marred the Appellant's economic life forever. If the Appellant had the opportunity to complete his engineering degree from GIT, he could have moved on to better opportunities like the younger white male and perhaps he would not have been around in December 2005 and or in February 2006 for more discriminatory and retaliatory abuses[22].

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[22] See Appendix No. 5, Ref Nos: 4, 10 and 11

Countless proofs and exhibits were submitted by the Appellant to the District Courts in support of his civil action case and many arguments were made and case references shared with the Court of Appeals by the Attorney who represented the Appellant during the appeal process to no avail. The Appellant now vies for closure in the opinion of the U.S. Supreme Court so he could rest his case in finality.

CONCLUSION

In McDonnell v, Cisneros, 84 F.3d 256 (7th Cir. 1996); Judge Posner, writing for the court, observed that "in the ordinary case" [such as this one} "an employer would have no reason to retaliate against someone who did not file a complaint." However, only employees who can prove an employee's protected activity caused the employer to take adverse, retaliatory and discriminatory actions may follow the narrow path through the very important limitation of

who may pursue retaliation claims. See Clover v. Total Sys. Servs., 176 F.3d 1346, 1354 (11th Cir. 1999) "to prevail on a retaliation claim, a Plaintiff must establish the requisite causal connection between statutorily protected conduct and adverse employment action". In every situation on this complex case of the Appellant against the Appellees, The Appellant had done just that, every step of the way, not only in words but also in supporting documents. Because of this very reason he feels that his writ should be granted.

Wherefore, I, the Appellant, am hereby humbly asking that your honorable, US Supreme Court, reads my writ and revisits; in the light of the Civil Rights Act of the 1964 including its amended versions and that of the Lilly Ledbetter Act of 2009; the paths followed by the District and Appellate

Courts that lead them to their final opinion and respective affirmation.

REASONS FOR GRANTING THE WRIT

The reasons for granting the writ are numerous. The Appellant list them in reverse chronological order as follows:

1. Failure by Ms. Terry Bridges to interview and to hire the Appellant for a position that he is fully qualified for [educationally] and for which he summed up all other prerequisites listed in the advertising for the position. Instead, Ms. Bridges decided to hire an outside person with less education and on the pretext that she met more than the required prerequisites. When in fact, Ms Bridges knew, too well, that Appellant was in a protected activity with

respect to age and other factors that give him protection under the Civil Rights Act of 1964.

2. The second wrongful termination notice that was issued to him on 20 of Feb 2006 on the basis of "Lack of Funding" in GTRI. When in fact the followings dispelled "Lack of Funding".

    a) Mr. Stephen Cross, Director of GTRI, in his 2005 annual report on the state of GTRI, wrote that the organization received $135.4 millions in contract awards and grants or $3.5 millions for sponsored research project funding more than it received in fiscal 2004; while cost overruns on research programs decreased by more than 50 percent over fiscal year 2004 and budgetary reserves

increased by $350,000.00. This scenario does not mirror that of: "Lack of Funding".

b) Ms. Ann Batchelor wrote, in her 24 January 2006 e-mail addressed to Mike Harris,

"Mike. We had planned to use Geoving fairly extensively. I have since reviewed his personnel file as usual when anticipating using someone at least half time. Frankly I am disappointed shocked dismayed. I must admit I now have some serious concerns which will require further discussion with you and Geoving on my return. Are you available next Monday? ----------sent from my Blackberry Wireless Handheld" This e-mail message indicated that Ms.

Batchelor had funding in her GTRI group to "fairly extensively" pay the Appellant for the service he was providing, Instead she used the pretext of being disappointed shocked dismayed by the then undisclosed information she found while reviewing Appellant's personnel file. Appellant was therefore not terminated due to a "Lack of Funding" but rather by Retaliation against the writing style he used as he described his feelings to genuinely compare how powerless he used to feel in his birth country, Haiti, under the power of militia men of Papa Doc to how powerless he felt under the commands of the triumvirate women, [three

highest administrative women in charge of day-to-day operations], in GTRI.

c) Subsequently, Ms. Batchelor and 10 other affiants, under the guidance of the lead Attorney from the State of GA Attorney General's Office, filed sworn affidavits filled with pretexts and untrue statements to vilify the Appellant in the eyes of the lower courts in order to convince the courts to ratify their summary judgment in lieu of a full jury trial. The lower courts granted and the court of Appeals upheld opinions in favor of the Appellees without giving to the Appellant an opportunity to challenge, in the presence of a full jury, any of the sworn affiants on the

numerous false allegations they filed against him.

3. His first termination letter dated 05 December 2005 due to "GTRI Lack of Funding" was also a pretext as above-established in paragraph 2a. The true reason was retaliation by GTRI Administrative Vice-President, Janice Rogers, through Brenda Hill against the Appellant for staging his disappointment of a position promised to him by Ms. Rogers, who ultimately gave the position to a younger white male, Paul Hawley, after the Appellant had successfully accomplished the task Ms. Rogers assigned to him with the promise for him [Appellant] to become the GTRI administrator arm of the GIT CHEMATIX program.

At the time of this first termination, Appellant had more than enough funding in his budgetary program to run until 30 June 2006. He did not have lack of

funding at least until 30 June 2006 and neither did GTRI. He was terminated on False Pretense.

3. Appellant followed the legal procedures by filing his charges with EEOC within the 300 days allowed to a bona fide State employer, Georgia. EEOC investigators issued to him four permission-to-sue letters. Appellant did fail to timely file his civil action with the court for the first two permission-to-sue letters through NO FAULT of his own. Because, in spite of Appellant's numerous phone calls and letters requesting copies of his files from EEOC for a prospective attorney to review in order to decide on whether to represent him, EEOC denied all of his requests. After receiving his third permission-to-sue letter from EEOC, the Appellant decided to file his civil action case, pro se, with the hope to get

copies of his files from EEOC later. Instead, EEOC filed a motion with the court accusing the Appellant of prematurely jumping into the discovery process in order to not giving him copies of his files.

4. In May 1995, Appellant pioneered and managed for GTRI procurement and tracking programs, which placed him into a totally separate job category in all terms. He should have been reclassified immediately, assigned a new title and appropriately compensated. In spite of his numerous requests for reclassification, it took him seven years working under the old Chemical Technician II title and old associated pay scale until he learned that in order to get reclassified he would have to complete the appropriate paperwork himself and present it to his

supervisor. He did get reclassified soon there after in 2002.

Then a bizarre twist came with that reclassification. All parties involved in the approval of his promotion agreed that he should be reclassified to Program Coordinator II. However, Ms. Nancy Farr, of GIT HRD, decided to reduced his title to Program Coordinator I, on the basis that she could not find anyone on the campus work force to bench mark his job against without taking into consideration that he created the job he was doing to benefit his employer [Doc. 71 Ex. 70]. Not only Ms. Farr's decision proportionally reduce his salary to that of the title she gave him, but also, she only gave him a 3% salary increase in lieu of the 15% increase he should have received for going from job pay No. 108 to

job pay No. 111 and her reasoning was that he stayed such a long time in his old job title of Chemical Technician II, that he had maxed or over maxed out the pay scale for that position.

To add insult to injury or to make matter worst, Ms. Terry Bridges of GTRI Personnel Support Team wrote several e-mail messages to Appellant's supervisor, urging him to deny Appellant the 5% cost of living allowance the State of Georgia Governor approved for all State employees of that Year. Appellant's Supervisor, Mike Harris, succumbed to her [Ms. Bridges] multiple demands by denying him the cost of living allowance [Doc. 71 Ex. 71].

It is obvious that Appellant had been the subject of discrimination, unfair treatment with regard to reclassification, promotion,

salary suppression and salary denial that had, not only, kept him, but will continue to hold his family and him into an oppressed economic situation for the rest of their terrestrial existence.

5. Before the above-listed happenstances, the Appellant suffered a series of unfair disparities under a previous supervisor. First, He was denied the opportunity to attend free accounting classes offered by the State of GA Board of Regents while his supervisor's secretary, a young white female, was given that opportunity. Those classes were offered during the lunch hour at a remote location off campus.

   Second, Appellant voluntary dropped out of school to assist with care for his first born. When he was ready to resume the pursuit for

his materials engineering degree, he was told that his presence was needed at all hours in the laboratory. Thus his supervisor refused him the permission he needed to attend classes in accordance with GIT regulations. He [Appellant] phoned GIT HRD to find out the number of classes a full time employee was allowed to take and he was told there was no limit as long as he had the approval of his direct supervisor. He requested a meeting with his direct supervisor and his former supervisor who was then the supervisor of his direct supervisor. In the meeting, he told them of his findings from GIT HRD. His former supervisor instructed them that the decision was left to his [Appellant] direct supervisor, who held on to his initial decision

of not allowing the Appellant to go to classes during the working hours.

However, his supervisor allowed a young white male, full time employee like the Appellant, to take off during the working hours to go to classes and the practice went on for years until the young man received his Philosophy Degree from GIT.

In the interim, the Appellant had to forgo his dream to get his GIT bachelor degree in materials science because GIT didn't and still doesn't offer night classes in that degree program. So, the Appellant had to settle for a much less rewarding program in business management and computer information system. It took him many years to start de novo with a new degree program as he attended the evening classes offered by St. Leo

University of Florida on the local Army posts and Naval base in the metro Atlanta.

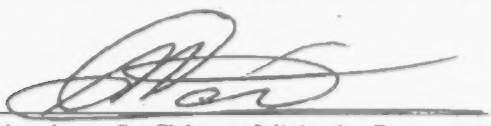
The playing fields, as described in this section, were not leveled. Consequently, the actions of that supervisor will forever continue to have adverse economic repercussions on the lives of every member of the Appellant's family and on his life as well. Counting the time, it took the Appellant to start, from scratch a new degree program and the number of years it took him to graduate from that program, he would have completed his materials engineering program from the junior standing and would have completed a master in that field. That would have either afforded the Appellant the opportunity to move on to greener pasture like the favored young white male did after securing his PhD in materials engineering or

> placed him [the Appellant] into a much better position to find a new position after being terminated by his employer at the age of 58 ½.

Now, I, the Appellant, respectfully submit this matter into the hands and the minds of the best and brightest Judges in the Highest Court on our land.

So bless them God with Your Powerful Light and Abundant Guidance! Sincerely,

This 15th Day of September, 2009.



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THE APPENDICES

APPENDIX No.1
[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
APRIL 24, 2009
THOMAS K. KAHN
CLERK

No. 08-15400
Non-Argument Calendar
D. C. Docket No. 07-00109-CV-CC-1

GEOVING JOSEPH GERARD,
Plaintiff-Appellant,
versus

BOARD OF REGENTS OF THE STATE OF GEORGIA, AND

GEORGIA INSTITUTE OF TECHNOLOGY,
Defendants-Appellees,

Appeal from the United States District Court
For the Northern District of Georgia

(April 24, 2009)

Before BIRCH, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

Geoving Joseph Gerard ("Gerard"), a naturalized African-American male from Haiti, appeals, through counsel, the district court's grant of summary judgment in favor of his former employer, the Board of Regents of the State of Georgia and Georgia Institute of Technology,1 on his claims of racial discrimination and retaliation brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a), 3(a). In his amended complaint, Gerard

alleged, inter alia, that: (1) he was denied a promised position because Georgia Tech retaliated against him for failing to withdraw a December 2005 letter charging officials with age, race, national origin, and color discrimination; and (2) Georgia Tech failed to hire him for a position on the basis of his age, race, and color, or protected activities. Gerard makes two arguments on appeal. First, he contends that evidence showed that he engaged in protected activity, that a causal connection existed

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[1] Gerard also sued two other defendants, the Georgia Tech Research Institute ("GTRI") and Georgia Test Regional Corporation ("GTRC"), and asserted certain state law claims. His claims against GTRI and GTRC are not at issue on appeal. Moreover, because Gerard does not challenge the district court's dismissal of his

state law claims on appeal, any claims in this respect are waived. See Kelliher v. Veneman, 313 F.3d 1270, 1274 n.3 (11th Cir. 2002). The remaining defendants will be referred to collectively as "Georgia Tech."

[2] Gerard raised numerous other claims in his complaint, however, because he does not challenge them on appeal, they are deemed waived. See Kelliher, 313 F.3d at 1274 n.3.

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between such activity and an alleged withdrawal of promised work, and that the latter act was retaliatory. Second, he argues that a genuine issue of material fact exists as to whether the refusal to hire him was discriminatory or retaliatory. After careful consideration of the record evidence and the parties' briefs, we conclude that the district court did not err in granting summary judgment in favor of Georgia

Tech. Accordingly, we AFFIRM.

I. BACKGROUND

Gerard began working for Georgia Tech in 1982 while still a student. 3 R464 at 39, 42. He was subsequently hired as a full-time Chemical Technician in October of 1985. Id. at 45. Gerard remained in that position until 2002 when his position was reclassified to that of Program Coordinator I, at which time Herbert Michael Harris ("Harris") became his supervisor. Id. at 70, 74-75; R3-61, Exh. D at 2-3. According to Harris, Gerard's duties as a Program Coordinator involved managing a database, placing orders, paying vendors, maintaining inventory, and preparing monthly reports, all related to the GTRI compressed gas/liquid gas program. R3-61, Exh. D at 3. After an

internal reorganization, the handling of chemical canisters became automated. As a result, Gerard's services were no longer required and funding became insufficient to support his position. Id. at 4.

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[3] Because our review is of the district court's grant of summary judgment in favor of Georgia Tech, we take the best set of facts for Gerard. See Davis v. Williams, 451 F.3d 759, 763 (11th Cir. 2006).

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On 5 December 2005, Harris sent Gerard a letter informing him that because of the lack of funding, his employment would be reduced by fifty percent on 1 January 2006, with a termination date of 1 February 2006. Id.; R4-64 at 125-26. Gerard's termination date was extended to 6 March 2006 after additional funds were made available. R3-61, Exh. D at 5. Harris notified Gerard of the extension in a letter dated 20 February 2006. Id.

After being notified of his impending termination, Gerard responded in the following manner. First, on 16 December 2005, he filed a complaint with the Georgia Commission on Equal Opportunity ("GCEO"), alleging failure to hire and failure to promote. Exh. Folder 1, Exh. 7 at 1-4. Then on 3 January 2006, he filed another complaint with the GCEO, alleging improper discharge and failure to hire. Exh. Folder 1, Exh. 12 at 1-3. Both of Gerard's GCEO complaints ultimately were dismissed for lack of timeliness. Exh. Folder 1, Exh. 7 at 8-9. In addition to his GCEO complaints, Gerard appealed his termination to Elizabeth Neely ("Neely") of the Office of Legal Affairs of the Board of Regents ("Office of Legal Affairs") and sent a letter to Stephen Cross, the director of GTRI. Exh. Folder 1, Exhs. 23 & 24. In his letter to Cross ("December 2005 letter"),

Gerard sought to inform him about what was happening within GTRI, explain his experiences, and request an investigation into what led to his termination notice. Exh. Folder 1, Exh. 24.

Gerard described the organization as a "family circus" in which hiring was based on nepotism, and wrote: You have your work cut out. You have to work your way past a long established and very powerful triumvirate of women who, either at will or by manipulations, makes the rainfalls and the sunshine in your organization. One cannot beg to differ with them. It is their way or no way. It is with sadden heart that I must say; after being out of Haiti for 35 years and away from the brutal regime of Papa Doc, his Tonton Macoute and the Boogie Man; that I feel living the era all over again.

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Id. at 3. After detailing his personal experiences and work history at Georgia Tech, Gerard proceeded to describe how he was not permitted to take classes at Georgia Tech, given deserved promotions, or provided with adequate pay raises. Id. at 513). Included within his December 2005 letter was the memorandum that he sent to Neely of the Office of Legal Affairs, in which he stated that he was wronged by not being selected to oversee a new chemical management system and that his "termination [was] a by-product of political corroborations among administrators and directors in GTRI to block and deny me openly advertised and available positions." Id. at 9-13. He closed the memorandum to Neely by writing:

In finality, I am hereby claiming reparation for suppressed reclassifications, fair salary denial and am asking for current salary commensurable with

the new GTRI Chematix Administrator position for which I worked hard and therefore I rightfully deserve. Unless, of course, that is too much for a Negro with a colonial French accent from a third

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world country to be reclassified and ascended to the rank of GTRI administrator. Id. at 13.

Gerard concluded his December 2005 letter, in part, by stating that he "believed [sic] to have been discriminated against for being too rhetorical and philosophical at times." Id. at 14. In his deposition, Gerard claimed that he requested that the December 2005 letter be included in his personnel file but conceded that he did not know if the personnel department complied with his request. R4-64 at 301-02.

In the interim, Harris, Gerard's supervisor, attempted to secure Gerard a position in another department at Georgia Tech. First, he contacted Steve Woodall ("Woodall") and inquired about a position for Gerard with the Research Security Department. R3-61, Exh. D at 6. Although Woodall initially agreed to provide coverage for Gerard, he

was forced to withdraw the offer after he learned that his department no longer had the requisite funding. Id. Harris also contacted Ann Batchelor

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("Batchelor"), the Deputy Director of the Military Sensing Information Analysis Center ("SENSIAC") about a possible long-term assignment for Gerard in her department. Id. at 7; R3-61, Exh. A at 1-3.

After being contacted by Gerard and Harris, Batchelor consulted with GTRI Personnel Support and the Laboratory Director and "was directed to review [Gerard's] personnel file," which was a common practice when considering someone for long-term employment. R3-61, Exh. A at 3-4. When doing so, Batchelor came across Gerard's December 2005 letter to Cross and was dismayed at its "unprofessional and unnecessarily hostile" tone. Id. at 4. Batchelor was especially bothered by Gerard's

reference to "a long established and very powerful triumvirate of women who, either at will or by manipulations, makes rainsfalls and the sunshine in your organization" because it indicated an animosity towards women, of whom Batchelor's group was largely comprised. Id. at 5. She also was disturbed by Gerard's comparison of GTRI to the "brutal regime of Papa Doc, his Tonton Macoute and the Boogie Man," which she viewed as a particularly undeserving analogy. Id. As a result, Batchelor did not think that Gerard would be a "positive or productive addition" to her staff, and at a meeting on 6 February 2006, she told Gerard that, in light of his unresolved grievance in his personnel file, she would not employ him. Id. at 6-7.

In his deposition, Gerard testified that Batchelor told him that if he withdrew his complaint from his personnel file, then she would reconsider her decision

to withdraw his work assignments. R4-64 at 319-21. Gerard reiterated this assertion in a 13 February 2006 letter to Neely, in which he claimed that he was being retaliated against because of his December 2005 letter to Cross. Exh. Folder 1, Exh. 27 at 1-2. Although Batchelor flatly denied offering any such quid pro quo arrangement, Gerard nevertheless filed another complaint with the GCEO, alleging failure to hire by Batchelor. R3-61, Exh. A at 7; Exh. Folder 1, Exh. 26 at 5. He claimed that while there was not an actual open position available, he nevertheless was

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promised work within SENSIAC. R4-64, at 286-87. He conceded that he did not know if anyone was hired in his stead. Id. at 291.

On 18 February 2006, Gerard wrote a letter to Woodall and Batchelor, apologizing to both for "implicating" them in his "retaliation complaints."

Exh. Folder 1, Exh. 32. He wrote that he was aware that the "persons who release the guillotine are not necessarily the victim's decapitators [sic]." Id. He also stated that "[s]ince you were placed in the line of fire, as sacrificing lambs at my cross-hair position, I was left with no choice [but] to utilize you as targets for my complaints." Id. Gerard concluded the letter by noting that Batchelor "can redeem [herself] to [her] God." Id. After reading the letter, Batchelor noted that "the unbalanced and threatening tone of [the] correspondence further confirmed [her] discomfort with Mr. Gerard's employment within SENSIAC or GTRI." R361, Exh. A at 7.

Although Harris, Gerard's supervisor, diligently continued to attempt to find coverage for Gerard with

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other departments, he was unable to do so and issued

Gerard a "lack of funding" letter on 20 February 2006, specifying Gerard's final termination date as 6 March 2006. Id., Exh. D, App. 2. In response, Gerard applied for seventeen positions at Georgia Tech between 27 February 2006 and 12 May 2006. Id., Exh. H at 4. According to Debbie McCloud ("McCloud"), an employment manager in Georgia Tech's human resources department, Gerard used Georgia Tech's online application process to apply for the positions. Id. at 1-3. The online applications do not ask for information regarding age, gender, national origin, race, or color, nor do they inquire as to previous EEOC charges or complaints against Georgia Tech. Id. at 3. If an applicant does not meet the minimum requirements of a position, the application is not forwarded by human resources to the hiring department for further review. Id. If an applicant's application and resume appear to meet

the minimum qualifications, the applicant is referred to the department's hiring manager who then reviews the referred applications, narrows the applicant pool, and contacts applicants for interviews. Id. at 3-4. Gerard was not selected for any of the positions for which he applied.

On 30 June 2006, Gerard filed another complaint with the GCEO, alleging failure to hire him for any of the positions that he had applied for with Georgia Tech. Exh. Folder 1, Exh. 39 at 1-3. He later filed the present suit. R1-1. Because we are concerned only with those issues before us on appeal, our sketch of the relevant factual background will cover only the circumstances surrounding Gerard's application for the Project Coordinator I position.

Terry Bridges ("Bridges"), the Associate Director of Personnel Support Team, served as the hiring manager for the Project Coordinator I position, which

involved reviewing contracts, serving as an interface for contracts between labs, government agencies, and other departments, and monitoring the implementation of databases to ensure compliance with contract requirements. R3-61, Exh. C at 1-3. According to Bridges, "[t]he hiring criteria for this

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position required four or more years of job related experience and a preference for working knowledge of

various government forms and the ability to read and understand sponsored contracts." Id. at 2-3. Ultimately, Bridges selected Palla Smith for the position based on her experience both in a university setting and "working closely with contracts, including monitoring and closing out contracts," and because she demonstrated in her interview that "she possessed the ability to interpret contracts as they

relate to property." Id. at 3. Bridges noted that although Gerard met the minimum qualifications for this position, he was not chosen because he had less relevant job experience and he "lacked experience managing contract[s] and subcontracts." Id.

Gerard countered that he had a degree in business administration and computer information systems but conceded that he indicated on his employment application that he had only completed up to grade twelve. R4-64 at 18-19

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According to Smith's application, she had been an assistant research administrator at Emory University since 2004, and prior to that, she was an administrative assistant at Emory for five years. R3-61, Exh. C, App. 2 at 1-3.

Smith had a two-year nursing degree and had completed three years towards a degree in

managerial sciences. Id. at 1. In Smith's last position with Emory she was "[r]esponsible for close-out requirement[s] of routine projects and related files and database entries." Id. at 2.

Georgia Tech responded to Gerard's complaint by filing a motion for summary judgment. R3-61. The case was sent to a magistrate judge who duly issued a final report and recommended that summary judgment be granted on the majority of Gerard's claims because he failed to exhaust his administrative remedies. R5-73 at 24-25, 27-28. The magistrate judge also recommended

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granting summary judgment in favor of Georgia Tech on Gerard's remaining claims. See id. at 33, 42, 53. Because the magistrate judge found that Gerard

presented no direct evidence in support of his remaining discrimination and retaliation claims, he applied the burden shifting framework from McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04, 93 S. Ct. 1817, 1824-25 (1973).

Specifically, with respect to Gerard's claim that he was denied a promised position within SENSIAC, the magistrate judge found that Gerard did not establish a prima facie case of discrimination, because no SENSIAC position existed and he did not demonstrate that he was replaced by someone outside of his protected class. Id. at 33. Regardless, the magistrate judge found that Georgia Tech gave a legitimate, non-discriminatory reason for not providing Gerard with continuing coverage, in that "Batchelor determined that he would not be a positive or productive addition to her staff because

she believed [he] harbored animosity towards women," and Gerard did not demonstrate pretext, or show that Batchelor was motivated by discriminatory intent. Id. at 34-35.

Moreover, the magistrate judge determined that Gerard did not establish a prima facie case of retaliation because his December 2005 letter to Cross did not allege discrimination based on any protected status and thus was not protected activity. Id. at 37-38. The magistrate judge also found that Gerard failed to show a causal connection between his

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GCEO charges and any adverse action, because he did not show that any decision-maker knew of his GCEO charges before making a hiring decision. Id. at 39-42.

With respect to Gerard's refusal to hire claim, the magistrate judge concluded that Georgia Tech had a

legitimate, non-discriminatory reason for hiring Smith for the Project Coordinator I position based on her relevant experience and Gerard failed to show pretext. Id. at 44-45. Moreover, the magistrate judge found that Gerard did not show that he was "so clearly more qualified" than Smith because he did not have more experience than Smith in interpreting contracts, a key requirement for the Project Coordinator I position. Id. at 46-47. The district court adopted the magistrate judge's report and entered summary judgment for Georgia Tech on Gerard's federal claims. R5-77.

Gerard appeals the district court's grant of summary judgment in favor of Georgia Tech on two of his claims and makes the following arguments. First, he

contends that he was denied a position in Batchelor's SENSIAC department in retaliation for engaging in a protected activity – i.e., filing his GCEO grievances and submitting his December 2005 letter to Cross. Second, Gerard argues that he was refused the Project Coordinator I position because he previously had filed a retaliation claim with Georgia Tech. We consider each argument in turn.

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II. DISCUSSION

We review a district court's grant of summary judgment de novo, viewing all of the facts in the record in the light most favorable to the non-moving party. Brooks v. County Comm'n of Jefferson County, Ala., 446 F.3d 1160, 1161-62 (11th Cir. 2006). Summary judgment is appropriate where the moving party demonstrates, through "pleadings, the

discovery and disclosure materials on file, and any affidavits" that no issue of material fact exists, and they are "entitled to judgment as a matter of law." Federal Rule of Civil Procedure 56(c). "A party moving for summary judgment has the burden of showing that there is no genuine issue of fact." Eberhardt v. Waters, 901 F.2d 1578, 1580 (11th Cir. 1990) (quotation marks and citation omitted).

"A party opposing a properly submitted motion for summary judgment may not rest upon mere allegations or denials of his pleadings, but must set forth specific facts showing that there is a genuine issue for trial." Id. (quotation marks, alteration, and citation omitted). "All evidence and reasonable factual inferences therefrom must be viewed against the party seeking summary judgment." Id. (citation

omitted). Speculation or conjecture from a party cannot create a genuine issue of material fact. See Cordoba v. Dillard's, Inc., 419 F.3d 1169, 1181 (11th Cir. 2005). "A mere scintilla of evidence in support of the nonmoving party will not suffice to overcome a

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motion for summary judgment." Young v. City of Palm Bay, 358 F.3d 859, 860 (11th Cir. 2004). Title VII makes it unlawful "for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by [Title VII], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]." 42 U.S.C. § 2000e-3(a). When considering a Title VII motion for summary judgment involving circumstantial evidence, the district court analyzes the case using

the framework set out in McDonnell Douglas. See McDonnell Douglas Corp., 411 U.S. at 802-04, 93 S. Ct. at 1824-25. The McDonnell Douglas burden-shifting framework is also used by courts to analyze claims of indirect evidence of racial employment discrimination and retaliation claims. See Holifield v. Reno, 115 F.3d 1555, 1564-66 (11th Cir. 1997) (per curiam). Because Gerard's claims are based solely on circumstantial evidence, the McDonnell Douglas framework applies.4 Under McDonnell Douglas, the plaintiff bears the initial burden of presenting sufficient evidence to allow a reasonably jury to determine that he has 4 Gerard challenges the district court's application of the McDonnell Douglas burden-shifting framework for the first time in his reply brief. Because we do not consider issues raised for the first time in a reply brief on appeal, we disregard Gerard's challenge. See Access Now, Inc. v.

Southwest Airlines Co., 385 F.3d 1324, 1331 (11th Cir. 2004).

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satisfied the elements of his prima facie case. McDonnell Douglas, 411 U.S. at 802, 93 S. Ct. at 1824. If a prima facie case is established, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the employment decision. Id. If articulated, the plaintiff must show that the defendant's reason was pretextual. Id. at 804; 93 S. Ct. at 1825. The employer's articulated reason is legitimate as long as it is honestly and reasonably held. See Elrod v. Sears, Roebuck & Co., 939 F.2d 1466, 1470 (11th Cir. 1991).

To establish a prima facie case of retaliation under Title VII, a plaintiff must show that: (1) he engaged in statutorily protected expression; (2) his employer

subjected him to an act that would have been materially adverse to a reasonable employee or job applicant; and (3) there is some causal relation between the two events. See Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68-69, 126 S. Ct. 2405, 2411-12, 2414-15 (2006) (announcing "materially adverse" element); Pipkins v. City of Temple Terrace, Fla., 267 F.3d 1197, 1201 (11th Cir. 2001).

Statutorily protected expression includes internal complaints of discrimination to superiors, as well as complaints lodged with the EEOC and discrimination-based lawsuits. See Pipkins, 267 F.3d at 1201. An employer's refusal to hire is a materially adverse action. See Burlington N. & Santa Fe Ry. Co., 548 U.S. at 67-68, 126 S. Ct. at 2414-15 (holding that the "scope of the anti-retaliation

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provision extends beyond workplace-related or employment-related retaliatory acts and harm").

To establish the causal connection required by the third prong, the plaintiff must show that (a) "the decision-makers were aware of the protected conduct;" and (b) "the protected activity and the adverse [employment] action were not wholly unrelated." McCann v. Tillman, 526 F.3d 1370, 1376 (11th Cir.) (quotation marks, alteration, and citations omitted), cert. denied, 129 S. Ct. 404 (2008). "[C]lose temporal proximity may be sufficient to show that the protected activity and the adverse [employment] action were not wholly unrelated" for a prima facie case. Id. (quotation marks and citation omitted). However, "temporal proximity alone is insufficient to create a genuine issue of fact as to causal connection where there is unrebutted evidence that the decision

maker did not have knowledge that the employee engaged in protected conduct." Brungart v. BellSouth Telecomms., Inc., 231 F.3d 791, 799 (11th Cir. 2000) (citation omitted). If a plaintiff makes a prima facie showing of retaliation, and the employer offers a legitimate, non-discriminatory reason for the employment action, the plaintiff must then come forward with evidence sufficient to permit a reasonable fact finder to conclude that the reasons given by the employer were pretextual. See Holifield, 115 F.3d at 1566.

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To show pretext, the plaintiff must present sufficient evidence "to permit a reasonable fact finder to conclude that the reasons given by the employer were not the real reasons for the adverse employment decision." Combs v. Plantation Patterns, 106 F.3d 1519, 1528 (11th Cir. 1997) (citation omitted).

Conclusory allegations, without more, are insufficient to show pretext. Mayfield v. Patterson Pump Co., 101 F.3d 1371, 1376-77 (11th Cir. 1996). Instead, the plaintiff must meet the proffered reason "head on and rebut it." Chapman v. AI Transp., 229 F.3d 1012, 1030 (11th Cir. 2000) (en banc). Unsupported assertions are not evidence of pretext. See Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1332 (11th Cir. 1998) (noting that "a naked assertion is not evidence of pretext, especially when the uncontroverted evidence suggests that the statement was in fact true"). Moreover, summary judgment is proper where the defendant offers legitimate reasons and the employee only offers temporal proximity. See Wascura

v. City of S. Miami, 257 F.3d 1238, 1247 (11th Cir. 2001) (affirming summary judgment for employer

where legitimate reasons for the termination decision were offered by the defendant and employee presented virtually no evidence of discrimination, other than temporal proximity of the events).

A.

Withdrawal of "Promised" SENSIAC Position The district court did not err by granting Georgia Tech's

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motion for summary judgment on Gerard's retaliatory withdrawal of promised work claim.

We conclude that Gerard's December 2005 letter to Cross did not constitute statutorily protected expression, because it laid out a list of grievances, but did not indicate that he was discriminated against based on his membership in a protected group. In fact, his letter contained one mention of race, which, when taken in context, did not assert a claim for racial discrimination. This "scintilla of

evidence" was insufficient to overcome Georgia Tech's motion for summary judgment. See Young, 358 F.3d at 860.

While Gerard's other charges of discrimination, e.g., his GEOC complaints, were protected activity, the evidence does not show that Batchelor was aware of them when she decided to not offer Gerard a position in her department. Gerard speculates that Batchelor was aware of the complaints because she did not affirmatively deny knowing of them in her affidavit, but, as we previously have noted, speculation does not create a genuine issue of material fact. See Cordoba, 419 F.3d at 1181. Because the record evidence shows that Batchelor's discomfort with Gerard stemmed largely from his comparison of Georgia Tech officials to the "brutal regime of Papa Doc, his Tonton Macoute and the Boogie Man," and

from his generally unbalanced and hostile tone in other correspondence with her, we find that she had a legitimate reason for refusing to hire him. See Elrod, 939 F.2d

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at 1470. Moreover, the record does not show any evidence of, and Gerard does not argue, pretext.

Because Gerard failed to show that (1) he engaged in protected activity in late 2005 and early 2006, (2) a causal connection existed between such activity and the alleged withdrawal of promised work by Batchelor, or (3) this act was retaliatory, we affirm the district court's grant of summary judgment in favor of Georgia Tech on Gerard's withdrawal of promised work claim.

B. Refusal to Hire (Project Coordinator I) Claim We also conclude that the district court did not err in granting summary judgment in favor of Georgia Tech on Gerard's refusal to hire claim. Although Gerard contends that Bridges, the decision maker, knew of his protected retaliation claim – because he forwarded to Bridges copies of his February 2006 letter to Neely, in which he clearly laid out his claim for retaliation – we find that the Neely letter cannot be construed as protected activity because, although it mentioned retaliation, it did not mention race, color, or national origin, nor did it allege that Gerard was subjected to discrimination on the basis of race, color, or national origin. See Exh. Folder, Exh. 27 at 1-2. Moreover, there is no evidence that Bridges knew of Gerard's GCEO charges prior to making his hiring decision.

Additionally, even if Gerard established that his qualifications were equal to those

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of Smith, Georgia Tech provided legitimate, non-discriminatory reasons for hiring Smith, namely, that she had experience both in a university setting and "working closely with contracts, including monitoring and closing out contracts," and that she "possessed the ability to interpret contracts as they relate to property." R3-61, Exh. C at 3.

Finally, Gerard provided no evidence that Georgia Tech's reasons for not hiring him were pretextual. Although Gerard filed his GCEO complaints in late 2005 and early 2006, shortly before Georgia Tech's refusal to hire him in April 2006, we conclude that this temporal proximity alone does not show pretext.

See Wascura, 257 F.3d at 1247. While Gerard attempts to rebut Georgia Tech's contention that his qualifications were inferior to those of Smith by attacking Smith's education, experience, grammar, and resume, he ultimately fails to meet Georgia Tech's reason for hiring Smith head on, and rebut it, as required by our
precedent in this area. See Chapman, 229 F.3d at 1030. Further, he presents no
arguments, and there is no evidence, that Georgia Tech's reasons for hiring Smith
instead of him were not legitimate.

III. CONCLUSION

Gerard appeals the district court's grant of summary judgment in favor of Georgia Tech on his claims of discrimination and retaliation. After careful

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consideration of the record evidence and the parties' briefs, we conclude that the district court did not err in granting summary judgment in favor of Georgia Tech.

Accordingly, we AFFIRM.

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APPENDIX No.2

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

GÉOVING JOSEPH GÉRARD,

Plaintiff,

v.

BOARD OF REGENTS OF THE STATE OF

GEORGIA, et al.,

Defendants.

CIVIL ACTION NO. 1:07-CV-00109-CC-RGV

MAGISTRATE JUDGE'S FINAL REPORT, RECOMMENDATION, AND ORDER

Géoving Joseph Gérard ("plaintiff"), proceeding pro se, brings this employment discrimination action against his former employer, the Georgia Institute of Technology ("Georgia Tech"), the Georgia Tech Research Corporation ("GTRC"), and the Board of Regents of the State of Georgia ("the Board") (collectively, "defendants"), under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e et seq., and the Georgia Fair Employment Practices Act of 1978 ("FEPA"), O.C.G.A. § 45-19-20 et seq., [Doc. 18]. Plaintiff alleges that he was discriminated against on the basis of his national origin, race, color, and sex, and that he suffered retaliation after complaining about the

discrimination.[1] Defendants move for summary judgment on several grounds, [Docs. 46,[2] 61], which plaintiff opposes. [Docs. 50, 66].[3] For the reasons stated herein, the undersigned Magistrate Judge hereby RECOMMENDS that defendants' motions for summary judgment, [Docs. 46, 61], be GRANTED.

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1 Plaintiff also alleges in his amended complaint that he was discriminated against on the basis of age. [Doc. 18, ¶¶ 2, 7-11]. However, age is not a protected category under Title VII, and plaintiff has not alleged any violations of the Age Discrimination in Employment Act ("ADEA"), which provides the exclusive remedy for such claims. 29 U.S.C. § 621, et seq. Moreover, even if plaintiff had properly alleged an ADEA claim, defendants would be entitled to

Eleventh Amendment immunity from suit under the ADEA. Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 9192 (2000) (ADEA did not validly abrogate Eleventh Amendment immunity); Stephens v. Ga. Dep't of Transp., 134 Fed. App. 320, 324 (11th Cir. 2005) (same). Accordingly, plaintiff's allegations of age discrimination are not properly before the Court and will not be addressed herein.

2 GTRC filed a motion to dismiss, [Doc. 46], which the Court converted intoa motion for summary judgment, [Doc. 48]. Plaintiff had filed a voluntary dismissal without prejudice of GTRC, [Doc. 47], but he subsequently moved to strike his voluntary dismissal, [Doc. 51], which the Court hereby GRANTS.

3 Plaintiff also filed a document entitled "Post BOR, GIT and GTRI (Defendants') Answers to Plaintiff's Statements of Materials of Facts As to Which There

Are No Genuine Issues to be Tried & Notification that Defendants Will be Asked to Collaborate in the Completion of a Consolidated Pretrial Order," [Doc. 71], which amounts to a surreply. "Neither the Federal Rules of Civil Procedure nor this Court's Local Rules authorize the filing of surreplies." Fedrick v. Mercedes-Benz USA, LLC, 366 F. Supp. 2d 1190, 1197 (N.D. Ga. 2005). Because plaintiff has offered no valid reason for filing this surreply, the Court does not consider it herein. Id.; see also Gary v. Menlo Logistics Global Transp. Servs., Inc., Civil Action No. 1:06-CV2134-TWT, 2007 WL 528096, at *2 (N.D. Ga. Feb. 13, 2007).

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I. FACTUAL BACKGROUND

Plaintiff is a sixty-year-old African-American male who was born in Haiti and is a naturalized citizen of the United States. [Doc. 61-1; Doc. 64 (Pl.'s Dep.) at 9-19, 13]. He began working for Georgia Tech as a student assistant in 1982 in the "Engineering Experiment Section," the precursor to the Georgia Tech Research Institute ("GTRI"), the nonprofit, applied research arm of Georgia Tech. [Doc. 64 at 39-40; Doc. 61-3 ¶¶ 2, 4]. Plaintiff became a Chemical Technician in 1985 and received his salary from the Electro-Material Science Laboratory ("EMSL"). [Doc. 64 at 42]. Plaintiff's duties included "preparing [lab] samples, running experiments, . . . running every equipment that they have and collecting data and [preparing reports]." [Id. at 45-46]. He was promoted to Chemical Technician II in 1989 while working in the same department. [Id.; Doc. 61-3 ¶ 3].[4]

In approximately 2000, Herbert Michael "Mike" Harris ("Harris"), the head of the Microelectronics and Nanotechnologies Technical Working Group ("MNG"), became plaintiff's supervisor. [Doc. 64 at 48-49, 70; Doc. 61-3 ¶ 4]. In 2002, plaintiff approached Harris about reclassifying his position, and Harris initiated the process resulting in plaintiff's position being reclassified to Program Coordinator I, and

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4 Plaintiff's duties as Chemical Technician II remained largely the same as those he performed in the Chemical Technician position, with slightly more responsibility in terms of preparing reports and analyzing data. [Doc. 64 at 54].

plaintiff receiving a three-grade promotion and three-percent pay raise. [Doc. 61-8 ¶ 3; Doc. 64 at 50; Doc. 61-3 ¶ 3]. While working as Program Coordinator I, plaintiff's duties fell under the umbrella of GTRI's Support Services Department ("SSD"),[5] which included "chemical container management and gas cylinder demurrage (rental)." [Doc. 61-6 ¶ 6]. He was responsible for (1) managing GTRI's compressed and liquid gas programs; (2) designing, implementing, and managing a database program that centralized the chemical gas ordering; (3) serving as the primary contact with GTRI's contract gas suppliers and placing gas orders for all GTRI lab end users; (4) making vendor payments for all gases and gas-related purchases; (5) maintaining an inventory of gas cylinders for GTRI; (6) preparing monthly redistribution reports to GTRI accounting; and (7) managing GTRI's disposal of chemicals and

hazardous materials. [Doc. 61-3 ¶ 5; Doc. 64, Ex. 6; Doc. 61-8 ¶ 4].

Plaintiff represented GTRI in 2004 as part of a campus-wide focus group that considered adoption of a chemical management/tracking system for Georgia Tech called CHEMATIX. [Doc. 64 at 143-45; 61-3 ¶ 8]. The software was implemented in

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5 SSD is "responsible for all building maintenance & grounds maintenance, custodial support, data management to include State inventory of equipment, surplus management and Space data management, Leases, Shipping and Receiving . . . . [and] oversite [sic] for GTRI of the Hazardous Materials Safety and Right-to-Know as it applies to [SSD's] area through the Board of Regents and GT rules and policies ensuring compliance." [Doc. 61-10 ¶ 3].

April 2005, and it automated the handling of chemical canisters for GTRI, eliminating the Gas Cylinder Demurrage programs and allowing the gas cylinders to be subsumed into the chemical canister inventory. [Doc. 61-10 ¶ 14; Doc. 61-3 ¶ 24]. Each of the labs, therefore, internally assumed plaintiff's responsibilities with respect to gas cylinder rentals, thereby decentralizing plaintiff's job. [Doc. 61-6 ¶ 6; Doc. 61-3 ¶ 25].

In 2005, as part of a corporate reorganization, GTRI split into two laboratories, Health and Environmental Systems Lab ("HESL") and Electro-Optical Systems

Laboratory ("EOSL"). [Doc. 64 at 107-08; Doc. 61-6 ¶ 3]. In July of that year, Gisele Bennett ("Bennett") became the Director of EOSL, which was divided into six working groups, including MNG. [Doc. 64 at 105; Doc. 61-6 ¶ 2 & Ex. 1]. At this time, plaintiff was assigned to EOSL, and his salary came partly from funding for that lab, and partly from funding for "other labs in the academic group that [he] service[d] under the same umbrella of that program." [Doc. 64 at 110]. Plaintiff's chemical container management and gas cylinder demurrage work was funded by "several GTRI departments, including the [SSD]." [Doc. 61-6 ¶ 6].

Bennett conducted a survey of all the labs to determine how to make EOSL more efficient. [Doc. 61-6 ¶ 9; Doc. 61-3 ¶ 29]. Upon reviewing the survey

results, she learned that since plaintiff's position had become decentralized by the

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implementation of the CHEMATIX software, the only group using plaintiff's services was Harris' group, MNG. [Doc. 61-6 ¶ 9; Doc. 61-3 ¶ 29].[6] After a four-tofive month trial period to monitor the use of plaintiff's services by the other groups, Bennett eventually concluded that no other groups were using his services. [Doc. 61-6 ¶¶ 6, 9; Doc. 71-3, Ex. 57 (e-mail from Bennett to plaintiff)]. Therefore, she informed Harris that, beginning in January 2006, plaintiff would need to begin billing all of his time to MNG. [Doc. 61-6 ¶ 9; Doc. 71-3, Ex. 57]. Harris, however, determined that his group would have

insufficient funds to support plaintiff full-time. [Doc. 61-8 ¶ 6; Doc. 61-6 ¶ 9].

On December 5, 2005, Harris sent a letter to plaintiff informing him there was no longer funding for his position and that his employment would be reduced to 50 percent beginning January 1, 2006, with a termination date of February 1, 2006.

[Doc. 61-8 ¶ 7 & Ex. 1]. He informed plaintiff that the action was a result of lack of funding, and was not based on plaintiff's performance. [Id.]. Harris explained that GTRI was dependent on external funding for its financial resources, and there were "'currently insufficient sponsored projects in the laboratory to which [plaintiff] could be productively assigned for 100% coverage.'" [Id.].

6 Plaintiff testified that his responsibilities with regard to gas cylinder management and demurrage constituted eighty percent of his time. [Doc. 64 at 158].

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After receiving notification of his impending termination, plaintiff filed two charges of discrimination with the Georgia Commission on Equal Opportunity ("GCEO") in December 2005. He filed the first charge on December 14, 2005, alleging discrimination on the basis of age, national origin, race, color, and sex for "Failure to Hire" and "Failure to Promote." [Doc. 64 at 193 & Ex. 7; Doc. 61-3 ¶ 110]. Plaintiff asserted that he was notified on June

16, 2005, that he had not been selected for the position of GTRI Chemical Management/Administrator, and he alleged that his non-selection "strangled and eliminated coverage for [him]." [Doc. 64 at 193 & Ex. 7]. The GCEO dismissed this charge on December 22, 2005, because plaintiff

filed the charge more than 180 days after the date of the alleged discriminatory non-selection. [Doc. 64, Ex. 7].[7]

Plaintiff filed a second GCEO charge on December 22, 2005, alleging that he was discharged on December 5, 2005, based on his age, national origin, race, color, and sex. [Doc. 64 at 193 & Ex. 12; Doc. 61-3 ¶ 111]. Plaintiff also alleged that he was discriminated against when he was not hired for the

position of Property Coordinator for EOSL on April 20, 2005. [Doc. 64, Ex. 12]. In the narrative portion of the charge, plaintiff wrote that had he been given the post of Property

7 The GCEO forwarded plaintiff's charge to the Equal Opportunity Employment Commission ("EEOC"), which issued plaintiff a right-to-sue letter on March 31, 2006. [Doc. 64, Ex. 7].

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Coordinator, "the lab would have to provide for me the additional coverage I would need and I would not have to be terminated on 05 December 2005 . . . ." [Id.]. The GCEO dismissed this charge because it was not filed within 180 days from the date plaintiff was

notified of his non-selection. [Doc. 64 at 193 & Ex. 7].[8]

In addition to filing the GCEO charge, on December 19, 2005, plaintiff appealed the lack of funding decision to Elizabeth Neely ("Neely"), Associate Chancellor for Legal Affairs in the Office of Legal Affairs with the Board. [Doc. 6119 at 20]. Plaintiff also sent a memorandum to the GTRI Director, Dr. Stephen Cross ("Cross"), on December 25, 2005, challenging his termination. [Doc. 64, Ex. 24; Doc. 61-3 ¶ 35]. Plaintiff wrote in relevant part:

You have your work cut out. You have to work your way past a long established and very powerful triumvirate of women who, either at will or by manipulations, makes the rainfalls and the sunshine in your organization. One cannot beg to differ with

them. It is their way or no way. It is with a sadden heart that I must say; after being out of Haiti for 35 years and away from the brutal regime of Papa Doc, his Tonton Macoute and the Boogie Man; that I feel living the era all over again. [Doc. 64, Ex. 24; see also Doc. 61-20 at 2-15]. The "triumvirate of women" to whom plaintiff referred were Julie Blankenship, Brenda Hill, and Janice Rogers. [Doc. 64

8 The GCEO again forwarded the charge to the EEOC, which issued plaintiff a right-to-sue letter on September 21, 2006. [Doc. 64, Ex. 12; see also Doc. 61-19 at 13].

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at 142, 267].[9] Plaintiff stated, " They're secular. They're there. You might change president. You might change vice president. But they're there." [Doc.

64 at 267]. Plaintiff also documented in the memorandum a list of grievances that he accumulated while working at GTRI. [Doc. 64, Ex. 24; Doc. 61-20 at 2-15]. However, plaintiff did not allege in the memorandum that he had been discriminated against on the basis of his age, national origin, race, color, or sex.[10] Plaintiff requested that this memorandum be kept in his personnel file at GTRI and within Georgia Tech's Office of Human Resources. [Doc. 64 at 273].

In December 2005, Harris contacted Stephen Woodall ("Woodall"), the Director of Research Security Division ("RSD") about funding a position for plaintiff. Woodall was unsure as to whether he could secure funding for a position for plaintiff, but he believed that there might be some areas that

required additional support. [Doc. 61-15 ¶¶ 3-4]. In January 2006, Woodall secured the additional funding and obtained partial coverage for plaintiff to perform document inventory. [Id. ¶ 5; Doc. 61-22, Ex. 20B at 16 & Ex. 32 at 12-13 (e-mail 1/20/06)]. Woodall

9 Blankenship was GTRI's Accounting Director, [Doc. 71-3 at 91]; Hill was theDirector of SSD, [Doc. 61-10 ¶ 2]; and plaintiff referred to Rogers as the administrative vice president of GTRI, [Doc. 64 at 142].

10 Plaintiff did conclude his memorandum by stating that he sought reparations for his grievances, "[u]nless, of course, that is too much for a Negro with a colonial French accent from a third world country to be reclassified and ascended to the rank of GTRI administrator." [Doc. 61-20 at 14].

withdrew the initial offer, however, after being notified that his department was undergoing budget cuts and that there would be no funding for additional support. [Doc. 61-15 ¶¶ 6-7; Doc. 61-8 ¶ 13]. Plaintiff claims that work was "promised" to him. [Doc. 64 at 285].

Harris also contacted Ann Batchelor ("Batchelor"), the Deputy Director of the Military Sensing Information Analysis Center ("SENSIAC"), to see if her department would have a long-term assignment for plaintiff. [Doc. 61-5 ¶ 7]. Plaintiff had been performing various temporary work assignments for Jennifer Tate ("Tate") of SENSIAC, specifically

assisting her with an upcoming symposium. [Doc. 61-5 ¶ 4; Doc. 61-22, Ex. 23C at 21 (e-mail 1/18/06)].[11] Tate was not responsible for "budgets, staffing, and overall work assignments" in SENSIAC, and any promises of future or permanent work would had to have been approved by Batchelor. [Doc. 61-5 ¶ 6; Doc. 61-8 ¶ 14]. While Batchelor initially was receptive to Harris' request, she never provided plaintiff with a list of assigned duties within SENSIAC to perform or

11 Tate told Harris that she had been informed by Kim Toatley ("Toatley"), who oversaw accounting for SENSIAC, that SENSIAC would have at least 50 percent coverage for plaintiff for a few months. [Doc. 61-22, Ex. 23C at 21 (e-mail1/18/06)]. In addition to assisting with the symposium, he would assist with SENSIAC products and inventories, review SENSIAC holdings to obtain data for product and

security inventories, use classified computers to work on symposium presentations and publications, and assist with classified computer administrative/security responsibilities. [Id.].

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guaranteed him a fixed number of hours that he could bill to her work group. [Doc. 61-5 ¶ 5; Doc. 61-8 ¶¶ 14-15].

Before providing plaintiff a long-term assignment, Batchelor consulted with GTRI Personnel Support and the Laboratory Director, and was directed to review plaintiff's personnel file. [Doc. 61-5 ¶ 8]. Batchelor stated that she normally reviews such files when considering any individual for long-term

assignments or support. [Id.]. During her review of the file, Batchelor came across plaintiff's December 25 memorandum to Cross. Although she had planned to use plaintiff fairly extensively, her intentions changed after reviewing this memorandum. [Id. ¶¶ 11, 15; Doc. 61-3 ¶ 57]. Batchelor was not bothered by the fact that plaintiff was protesting his dismissal, but she was "dismayed by the harshness of his writing," and "shocked that he would have said such things to the audience at which his letter was addressed, which included the Director of GTRI and the President of Georgia Tech." [Doc. 61-5 ¶ 11]. She was particularly disturbed by his reference to the "very powerful triumvirate of women." [Id. ¶ 12]. Batchelor was concerned by what appeared to be plaintiff's "animosity or resentment towards women," and, given her experience in the industry and the fact that she managed a small staff composed mainly

of women; she was uncomfortable with the idea of placing him in her group. [Id.]. She was also concerned by his comparison of GTRI with the "brutal regime of

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Papa Doc," as she found it "crossed the boundaries of [professionalism], which is especially important considering the sensitive, classified nature of the work performed at SENSIAC." [Id. ¶ 13]. Ultimately, Batchelor did not believe plaintiff would be a "positive or productive addition to the SENSIAC staff." [Id. ¶ 14]. On February 6, 2006, Batchelor met with plaintiff and Harris and informed them that, based on her experience in the industry, she did not

wish to employ plaintiff "in light of the unresolved grievance." [Doc. 61-5 ¶¶ 16, 18; Doc. 61-8 ¶ 16; Doc. 64 at 290]. Plaintiff testified that there were never any direct statements made that indicated to him that he did not receive additional work with RSD or SENSIAC because of his national origin, race, or color. [Doc. 64 at 290]. He also did not know if Batchelor had seen any other grievances or plaintiff's EEOC charges in his personnel file. [Id. at 326]. The only one to which she referred was the December 25 memorandum. [Doc. 61-5 ¶¶ 9, 15-16].

On February 8, 2006, plaintiff wrote a letter to James Beisner ("Beisner"), the Director of GTRI's Personnel Support Team, stating that Batchelor had said she

would "reconsider her decision if the [December 25 memorandum] were no longer a part of [plaintiff's]

PST file." [Doc. 71-3, Ex. 53 at 9].[12] On February 13, 2006,

12 Batchelor, however, claims that she never informed plaintiff that she would reconsider her decision if he withdrew the memorandum from his personnel file. [Doc. 61-5 ¶ 19]. When plaintiff e-mailed Harris asking him to confirm what Batchelor had said, Harris responded that he did "not recall [Batchelor] saying that

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plaintiff drafted another memorandum to Elizabeth Neely, with the subject line "Retaliation vis-a-vis my appeal to employment termination." [Doc. 64, Ex. 27]. Plaintiff complained that funds had been retracted for his work with Woodall's group, and that Batchelor had decided not to give him additional

work after reading the December 25 memorandum. Plaintiff again claimed that Batchelor had stated that if plaintiff "were to remove the document from [his] file, although she could not give [him] any guaranty, she would reconsider her position on the matter." [Id.].

Plaintiff recounted his meeting with Beisner, who told him that there was no "per se" policy that would forbid him from working while such a document was in his file, but that GTRI employers were encouraged "to review the personnel file of potential employees such that they get a full spectrum of those individuals prior to hiring them." [Id.].

On February 14, 2006, plaintiff filed his third charge with the GCEO alleging that he was discriminated against on the basis of his age, national origin, race, color, and sex and in retaliation for filing previous

charges. [Doc. 64 at 284-89 & Ex. 26; Doc. 61-3 ¶ 112]. In the first part of this charge, plaintiff alleged that he was retaliated against in the form of "Disciplinary Action" when his duties were suspended. [Doc. 64, Ex. 26]. Specifically, plaintiff alleged that because he had she would reconsider if [plaintiff] withdrew the document from [his] personnel file." [Doc. 64 at 327].

"filed a complaint for a wrongful termination" and had requested that a copy be placed in his personnel file, his assignments with RSD were taken away in retaliation on or about February 6, 2006. [Id.]. Plaintiff also alleged that he had been retaliated

against for filing a complaint with the Board's Legal Affairs department. [Id.].

In the second part of this charge, plaintiff alleged that he received disciplinary action on February 6, 2006, in the form of suspension of duties for the position of "coordinator of multiple duties for SENSIAC." [Id.; see also Doc. 61-21, Ex. 26 at 35]. Plaintiff stated in the narrative portion that when individuals at SENSIAC became aware that he had "appealed [his] wrongful termination and requested that the copy of such document be made a part of [his] personnel record," Batchelor decided to withdraw her commitment to provide a position for him. [Doc. 64, Ex. 26].[13]

On February 18, 2006, plaintiff wrote a letter to Batchelor and Woodall, apologizing to both for

"implicating" them in his "retaliation complaints." [Doc. 615, Ex. 2 at 58]. He wrote that he knew that the "persons who release the guillotine are not necessarily the victim's decapitators [sic]." [Id.]. Plaintiff also stated, "Since you were placed in the line of fire, as sacrificing lambs at my cross-hair position, I

13 The GCEO dismissed this charge and forwarded it to the EEOC, which issued a right-to-sue letter to plaintiff on October 24, 2006. [Doc. 64, Ex. 26].

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was left with no choice but to utilize you as targets for my complaints." [Id.].

Batchelor stated that, after reading this memorandum, although plaintiff claimed that he had nothing personal against her, the "unbalanced and

threatening tone of this correspondence further confirmed [her] discomfort with [plaintiff's] employment within SENSIAC or GTRI." [Doc. 61-5 ¶ 20]. Despite being unable to cover all of plaintiff's hours in February through MNG, Harris did not terminate plaintiff on February 1, 2006, as planned. Instead, Harris tried to find additional work for plaintiff to extend his employment. [Doc. 61-8 ¶ 9; 61-3 ¶¶ 38-39]. Harris was able to locate coverage, allowing plaintiff to continue full-time with GTRI until March 6, 2006. [Doc. 61-8 ¶ 9].[14] Harris issued plaintiff another lack of funding letter dated February 20, 2006, stating that his employment with GTRI would be terminated effective March 6, 2006. [Id. ¶¶ 9-11 & Ex. 2 at 11].

Georgia Tech issued 21 "lack of funding" letters to employees between April 2005 and March 2006. [Doc.

61-7 ¶¶ 10-11; Doc. 61-3 ¶ 61]. Eight were female, and thirteen were male; seventeen were white, and four were African-American; and nineteen were of United States origin, and two (including plaintiff) were of international origin. [Doc. 61-7 ¶ 11 & Ex. 4; Doc. 64 at 342]. Although plaintiff

14 Harris also allowed plaintiff to use accrued vacation time as sources of funding. [Doc. 64 at 314; Doc. 61-3 ¶ 37].

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alleges that he "hardly knew the majority of the individuals on the list of the lack of funding memo," [Doc. 71 ¶ 61], he claims that "some of them are still working there." [Doc. 64 at 343].

At Harris' urging, [id. at 350], plaintiff applied for seventeen positions at Georgia Tech between February 27, 2006, and May 12, 2006. [Doc. 61-12 ¶ 10; Doc. 61-3 ¶ 76]. Plaintiff used Georgia Tech's online application process to apply for these positions, which allows applicants to attach their resumes to their applications. [Doc. 61-12 ¶ 3; Doc. 61-3 ¶ 64]. The online applications do not ask for information regarding age, gender, national origin, race, or color, nor do they inquire as to previous EEOC charges or complaints against Georgia Tech. [Doc. 61-12 ¶ 4; Doc. 61-3 ¶ 65]. If an applicant does not meet the minimum requirements of a position, the applicant is not qualified and his application is not forwarded by Human Resources to the hiring department for further review. [Doc. 61-12 ¶¶ 5-6; Doc. 61-3 ¶¶ 67-68]. If an applicant's application and resume appear to meet the minimum qualifications,

the applicant is referred to the department's hiring manger who then reviews the referred applications, narrows the applicant pool, and contacts applicants for interviews. [Doc. 61-12 ¶ 7; Doc. 61-3 ¶ 70]. Plaintiff was not selected for any of the positions for which he applied.[15]

15 Plaintiff claims that Debbie McCloud, the Employment Manager in the Human Resources Department at Georgia Tech, told him that because of his "special

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Four of the seventeen positions plaintiff applied for were cancelled and never filled. [Doc. 61-12 ¶ 17; Doc. 61-3 ¶ 77; Doc. 71-1 ¶ 77]. Plaintiff did not meet the

minimum qualifications for eight of the positions and was therefore not considered. [Doc. 61-12 ¶ 18; Doc. 61-3 ¶101]. Plaintiff claims that three of these eight positions were placed on hold, which led him to believe that he might still be called for an interview once the hold was lifted. [Doc. 71 ¶ 101]. Of the five remaining positions for which plaintiff met the minimum qualifications but was not selected, defendants maintain that the candidate selected was more qualified and usually had more experience than plaintiff. [Doc. 61-3 ¶ 78]. Plaintiff filed a fourth GCEO charge on June 30, 2006, claiming that he was discriminated against on the basis of his age, color, national origin, race, and sex, when he was not selected for fourteen available opportunities for which he applied at Georgia Tech. [Doc. 64, Ex. 39]. Plaintiff also alleged in the narrative portion that he was unlawfully retaliated against for appealing his

December 5, 2005, dismissal situation," he would have priority over internal applicants that were secure in their positions. [Doc. 71 ¶ 76]. Plaintiff cites Exhibit 86 in his Statement of Material Facts, but this exhibit consists only of a string of e-mails between plaintiff and McCloud in which he set up times to meet with her to discuss employment opportunities and advises her of some of the positions in which he is interested – there is no indication that McCloud told him he would have priority over other applicants. [See Doc. 71-3, Ex. 86 at 101 (2/22/06 e-mail correspondence)].

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letter, and for filing a "13 January 2006[16] retaliation charge against them for retracting and cancelling funding that were [sic] to support my salary after 31

January 2006." [Id.].[17]

Plaintiff filed his initial complaint in this action on January 17, 2007. [Doc. 1]. Plaintiff filed an amended complaint on March 19, 2007, [Doc. 18], pursuant to the Court's Order granting defendants' motion for a more definite statement. [Doc. 16]. Plaintiff's amended complaint alleges eleven claims of discrimination on various grounds which will be addressed in ruling on defendants' motions for summary judgment.

II. STANDARD OF REVIEW

In deciding a motion for summary judgment, the Court views all evidence in the light most favorable to and draws all reasonable inferences in the favor of the non-moving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Knight v. Baptist Hosp. of

Miami, Inc., 330 F.3d 1313, 1316 (11th Cir. 2003).

Summary

16 The January 13 retaliation that plaintiff refers to is presumably the third GCEO charge, filed on February 14, 2006, because this was the first charge alleging unlawful retaliation. Plaintiff wrote a memorandum to Harris and Virginia Myers, plaintiff's administrative assistant, on January 13, 2006, but in it he only apologized to them for not telling them earlier that he had appealed his termination. [Doc. 6121,Ex. 25 at 2]. Nothing in the memorandum relates to potential retaliation. [Id.].

17 The EEOC issued plaintiff a right-to-sue letter on June 14, 2007. [Doc. 64, Ex. 39].

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judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The party moving for summary judgment bears the initial burden of demonstrating the absence of any genuine issue of material facts, upon which the non-moving party must then submit specific facts showing a genuine issue for trial. FED. R. CIV. P. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "Speculation does not create a genuine issue of fact." Howard v. Or. Television, Inc., No. 07-15809, 2008 WL 1947094, at *1 (11th Cir. May 6, 2008) (citation and internal marks omitted). See also Goodman v. Ga. Sw., 147 Fed. App. 888, 891 (11th Cir. 2005) (unpublished) ("[A]ll reasonable inferences

arising from the undisputed facts should be made in favor of the nonmovant, but an inference based on speculation and conjecture is not reasonable.") (citation and internal marks omitted).

III. DISCUSSION

A. GTRC's Motion for Summary Judgment GTRC contends that it should be dismissed as a defendant pursuant to Federal Rule of Civil Procedure 21[18] and that plaintiff's claims against it should be

18 Under Federal Rule of Civil Procedure 21, "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any

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dismissed with prejudice because GTRC, a separate and independent entity from Georgia Tech and the Board, was never plaintiff's employer and had no connection to or involvement with plaintiff's employment at Georgia Tech. [Doc. 46-2 at 5-6; Doc. 46-3 ¶¶ 8-10]. See Llampallas v. Mini-Circuits, Lab, Inc., 163 F.3d 1236, 1243-44 (11th Cir. 1998). In response, plaintiff argues that because "GTRC shares parenthood of GTRI, derivatively and indirectly, [he] worked for GTRC in the same relation he worked for [the other defendants]." [Doc. 50 ¶ 2]. Plaintiff offers no evidence or legal authority to support his assertion that GTRC is a parent of GTRI and therefore was his employer, but even were that the case, dismissal of GTRC would still be proper. See Petroleum Data Servs. v. First City Bancorporation of Tex., Inc., 622 F. Supp. 1022, 1026 (D. Kan. 1985) (dropping a parent corporation pursuant to Rule 21

and allowing claims to proceed only against a subsidiary, which had actually entered into the contracts at issue). GTRC also argues that plaintiff's claims against it should also be dismissed because GTRC is not an employer under Title VII.[19] GTRC has never employed 15 stage of the action and on such terms as are just." The Court therefore has broad discretion under Rule 21 to release a party that has no connection to the claims asserted in the complaint. Lampliter Dinner Theater v. Liberty Mut. Ins. Co., 792 F.2d 1036, 1045 (11th Cir. 1986).

19 GTRC further argues that it should be dismissed as a defendant because it was never properly served and because plaintiff never named GTRC in any of his administrative charges. The Court does not reach these arguments because it finds

or more employees, thus removing it from coverage as an employer under Title VII and warranting dismissal of plaintiff's claims with prejudice. [Doc. 46-2 at 7; Doc. 46-3 ¶ 7]. See also 42 U.S.C. § 2000e(b); Gilham v. Athens Land Trust, Inc., 510 F. Supp. 2d 1349, 1355 (M.D. Ga. 2007) (dismissing with prejudice when a defendant was not a covered employer because it did not have 15 employees). In response, plaintiff argues that because of its relationship to GTRI, which has more than 15 employees, GTRC also has more than 15 employers and is therefore an "employer" under Title VII. [Doc. 50 ¶ 3]. Again, plaintiff cites no evidence or legal support for his contention, and based on the undisputed fact that GTRC has fewer than 15 employees, plaintiff's Title VII claims against GTRC

are due to be dismissed.[20] Accordingly, because GTRC is not and has never been an employer within the meaning of Title VII, and in any event, was not plaintiff's employer, the undersigned that GTRC should be dismissed as a defendant based on the other asserted grounds.

20 Plaintiff has also alleged violations of FEPA, O.C.G.A. § 45-19-20 et seq., which applies only to public employers as defined by statute and includes "any department, board, bureau, commission, authority, or other agency of the state which employs 15 or more employees within the state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year." O.C.G.A. § 45-19-22(5). GTRC alleges that it is not and has never been a public employer within the meaning of FEPA, [Doc. 46-3¶ 5; Doc. 46-2 at 9-10], and plaintiff claims only that GTRC is "[d]eductively" a parent

corporation because of its "administrative governance" of GTRI. [Doc. 50 ¶ 5]. Plaintiff offers no evidence or legal authority to support this assertion, and his FEPA claims against GTRC are likewise due to be dismissed with prejudice.

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RECOMMENDS that plaintiff's claims against GTRC be DISMISSED WITH PREJUDICE.

B. Georgia Tech and the Board's Motion for Summary Judgment 1 Administrative Exhaustion Georgia Tech and the Board contend that summary judgment should be granted on seven of plaintiff's eleven claims for failure to satisfy the administrative exhaustion requirements of Title VII. A plaintiff may

not bring an action alleging a violation of Title VII "unless the alleged discrimination has been made the subject of a timely-filed EEOC charge." Alexander v. Fulton County, Ga., 207 F.3d 1303, 1332 (11th Cir. 2000) (citing 42 U.S.C. § 2000e-5). See also Wilkerson v. Grinnell Corp., 270 F.3d 1314, 1317 (11th Cir. 2001) ("Before a plaintiff may sue for discrimination under Title VII, she must first exhaust her administrative remedies."). To be timely, an EEOC charge must be filed within 180 days after the alleged unlawful employment practice occurred.[21] Alexander, 207 F.3d at 1332. Moreover,

21 Timely filing of an EEOC charge is not a jurisdictional prerequisite to bringing a Title VII suit and is therefore subject to waiver and estoppel. Once the defendant raises the issue of timeliness, the plaintiff bears the burden of proving that any untimeliness is excused by an equitable exception,

such as waiver, estoppel, or the continuing violation doctrine. See Grayson v. K-Mart Corp., 79 F.3d 1086 (11th Cir. 1996); Malone v. K-Mart Corp., 51 F. Supp. 2d 1287, 1300 (M.D. Ala. 1999) (citing Delaware State Coll. v. Ricks, 449 U.S. 250, 256 (1980)); Howell v. Dep't of the Army, 975 F. Supp. 1293, 1300 (M.D. Ala. 1997); Thomas v. Nicholson, No. 2:05-CV-437WKW, 2007 WL 1857151, at *8 (M.D. Ala. June 27, 2007). Plaintiff has not proven that any equitable exceptions apply to him.

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a Title VII action must be filed in the district court within 90 days of the claimant's receipt of a right-to-sue letter from the EEOC. See 42 U.S.C. § 2000e-5(f)(1); Williams v. Ga. Dep't of Defense Nat. Guard Headquarters, 147 Fed. App. 134, 136 (11th Cir.

2005); Stallworth v. Wells Fargo Armored Servs. Corp., 936 F.2d 522, 524 (11th Cir.1991); Norris v. Fla. Dep't of Health & Rehab. Servs., 730 F.2d 682 (11th Cir.1984). Here, seven of plaintiff's claims were either never the subject of an EEOC charge, were not filed within 180 days of the alleged discriminatory act, or were not filed within the 90-day limitations period for bringing suit in federal court. a. Claims That Were Not the Subject of EEOC Charges

Plaintiff's first claim alleges that a former supervisor, Jack Lackey ("Lackey"), discriminated against him on the "basis of sex, national origin, race and color," by denying him the opportunity to attend a free accounting class offered by the State of Georgia while at the same time allowing a white female of United States origin to attend the same class. [See Doc. 18 ¶ 1; Doc. 61-20, Ex. 24 at 6; Doc. 64 at 54-60]. Similarly, in his second claim, plaintiff alleges that

Lackey discriminated against him on the basis of his age, color, national origin, and race, when he denied plaintiff the opportunity as a full-time employee to attend classes during the working hours while another "full time counterpart employee otherwise younger, white male of US origin under [Lackey's] supervision" was afforded that opportunity. [Doc. 18 ¶ 2;

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Doc. 61-20, Ex. 24 at 5-6; Doc. 64 at 62-66]. These incidents regarding Lackey occurred in the 1980s, [Doc. 64 at 51, 61], and were never the subject of a GCEO or EEOC charge. [Id. at 62].

Plaintiff alleges in his third claim that between 1995 and 2002 he was discriminated against on the basis of his national origin, race, and color because his supervisors failed to reclassify his job title from Chemical Technician to Program Coordinator for seven years, despite his requests, and that they "failed to inform him that, as a classified employee he should be the one to put forth the effort to filling [sic] and submitting the required forms to change his job classification." [Doc. 18 ¶ 3; Doc. 71 ¶¶ 3-6; Doc. 61-20, Ex. 24 at 7; Doc. 64 at 73-74]. Plaintiff alleges in his fourth claim that when he was finally reclassified, it was to "one lower title position than his departmental personnel support team, his direct supervisor and his supervisor's supervisor recommended that he got promoted to," and he alleges that his "pay scale was not properly calculated and therefore, he did not receive the

rightful compensation for the output he contributed to his employer." [Doc. 18 ¶ 4; Doc. 71 ¶ 7; Doc. 61-20, Ex. 24 at 7; Doc. 64 at 88-93]. However, these allegations were also never the subject of a GCEO or EEOC charge. [Doc. 61-2 at 13-14].

Because plaintiff never filed GCEO or EEOC charges with respect to the first four claims of his amended complaint, he failed to exhaust his administrative

remedies under Title VII, and the undersigned RECOMMENDS that summary judgment be GRANTED on these claims. See Gregory v. Ga. Dep't of Human Resources, 355 F.3d 1277, 1280 (11th Cir.

2004); Alexander, 207 F.3d at 1332; Wilkerson, 270 F.3d at 1317.

b. Claims Not Filed Within 180 Days of Alleged Discriminatory Acts or Within 90 Days of Issuance of Right-to-Sue Letters Plaintiff alleges in his sixth claim that he was discriminated against on the basis of his national origin, race, color, and sex by being denied assignment opportunities that were offered to a white female peer of United States origin.[22] [Doc. 18 ¶ 6; Doc. 64 at 191-92]. Plaintiff filed a charge with the GCEO on December 22, 2005, based in part on these allegations, claiming that he learned on April 20, 2005, that he had not been assigned the position of "Property Coordinator" within EOSL, and that he was discriminated against on the basis of age, national origin, race, color, and sex. [Doc. 61-19, Ex. 12 at 9-11]. Defendants argue that plaintiff's claims relating to the failure to assign him Property

Coordinator duties should be dismissed because plaintiff failed to file a GCEO charge within 180 days of the alleged discriminatory act. [Doc. 61-2 at 15-16; see also Doc. 64 at 190]. Because plaintiff did not file a GCEO charge relating to the April 20, 2005, incident until December 22, 2005, plaintiff exceeded the 180-day limitations period. See Wilkerson,

22 The "white female peer" was Virginia Myers. [Doc. 64 at 197-98].

270 F.3d at 1317. The GCEO still forwarded plaintiff's charge to the EEOC, and the EEOC issued plaintiff a right-to-sue letter on September 21, 2006. [Doc. 61-19, Ex. 12 at 13]. However, plaintiff did not file suit until January 17, 2007, [see Doc. 1],

exceeding the 90-day period in which to bring a Title VII action in federal court. See Stallworth, 936 F.2d at 524; Williams, 147 Fed. App. at 136; Norris, 730 F.2d at 682.

Plaintiff alleges in his seventh claim that he was discriminated against on the basis of his age, national origin, race, and color when he was denied the opportunity to become the GTRI administrator of the new CHEMATIX program which was placed under the "auspices of a younger white male of US origin." [Doc. 18 ¶ 7; see also Doc. 64 at 131-32; Doc. 61-18, Ex. 7 at 31-34]. This claim was the subject of a GCEO charge filed on December 14, 2005, but defendants argue that it should be dismissed as untimely since it was filed more than 180 days after the alleged discriminatory act, which occurred on June 16, 2005. [Doc. 61-18, Ex. 7 at 31-34; Doc. 61-3 ¶ 110; Doc. 61-2 at 14]. Moreover, plaintiff received a

right-to-sue letter from the EEOC on March 31, 2006, [Doc. 61-18, Ex. 7 at 38], but he did not file suit until January 17, 2007, thus exceeding the 90-day limitations period for filing an action in federal court. Thus, this claim is also untimely. See Wilkerson, 270 F.3d at 1317; Stallworth, 936 F.2d at 524; Norris, 730 F.2d at 682; Williams, 147 Fed. App. at 136. In his eighth claim, plaintiff alleges that on December 5, 2005, he was terminated on the basis of his age, national origin, race, and color, and that the

"sister program, to hazardous chemicals tracking, of procuring and tracking of gas cylinders and quality assurance purchasing of related equipment he pioneered . . . was given to the same younger white

male of US origin." [Doc. 18 ¶ 8]. Plaintiff alleges that Paul Hawley, an SSD Administrative Manager, took over his job once plaintiff received his "termination" notice. Defendants argue that this claim is also time-barred. [Doc. 61-2 at 15].

The December 5 lack of funding letter was the subject of plaintiff's second GCEO charge, filed on December 22, 2005. [Doc. 61-19, Ex. 12 at 9-11]. The GCEO dismissed the charge because plaintiff's allegation that he was discriminated against when he did not receive the position of EOSL Property Coordinator was not timely filed, since that action took place in April, and plaintiff did not file a charge until December 22, 2005. [Doc. 61-18, Ex. 7 at 35]. However, the portion of the December 22, 2005, GCEO charge regarding the lack of funding letter was filed within 180 days of the alleged discriminatory action on December 5, 2005. See

Vaughn v. Louisville Water Co., Civil Action No. 3:03CV-541-S, 2007 WL 2746669, at *1 (W.D. Ky. Sept. 18, 2007). Nevertheless, both claims are subject to dismissal because the EEOC issued plaintiff a right-to-sue letter on March 31, 2006, [Doc. 61-18, Ex. 7 at 38], and he failed to bring suit within 90 days of receiving this letter. [Doc. 1; Doc. 61-2 at 15]. Green v. Union Foundry Co., 281 F.3d 1229, 1233-34 (11th Cir. 2002); Stallworth, 936 F.2d at 524; Norris, 730 F.2d at 682; Williams, 147 Fed. App. at 136. Based on

plaintiff's failure to exhaust his administrative remedies by timely filing the charge and timely bringing suit in federal court, the undersigned RECOMMENDS that summary judgment be

GRANTED on the sixth, seventh, and eighth claims of plaintiff's amended complaint.

2. Plaintiff's Timely Claims of Discrimination Plaintiff properly exhausted the administrative prerequisites for his remaining claims, and because he presents no direct evidence of discrimination in this case,[23] these claims will be examined under the familiar burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). Burke-Fowler v. Orange County, Fla., 447 F.3d 1319, 1323 (11th Cir. 2006). Under this framework, plaintiff must present a prima facie case of discrimination by demonstrating that (1) he is a member of a protected class; (2) he was qualified for the job or job benefit at issue; (3) he was subjected to an adverse job action; and (4) his employer treated similarly situated employees outside of his class

more favorably. Id.; Rice-Lamar v. City of Fort Lauderdale, Fla., 232 F.3d 836, 842-43 (11th

23 Direct evidence is evidence that, if believed, would prove the existence of a fact without inference or presumption. Burrell v. Bd. of Trustees of the Univ. of Ala., 125 F.3d 1390, 1393 (11th Cir. 1997). Plaintiff lacks direct evidence to support his allegation that any of defendants' adverse actions were based on his national origin, race, color, or sex. Plaintiff testified that he had never heard a supervisor

make a racially disparaging or discriminatory comment to him. [Doc. 64 at 138-41]. He could only name hearsay statements and rumors that unidentified co-workers might have made discriminatory remarks about other minorities, but he identified no one by name and could not identify specific instances. [Id. at 141].

Cir. 2000). "Demonstrating a prima facie case is not onerous; it requires only that the plaintiff establish facts adequate to permit an inference of discrimination." Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997). See also Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253-54 (1981).

If plaintiff satisfies his prima facie burden, then defendants must articulate a legitimate, nondiscriminatory reason for their actions. Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1087 (11th Cir. 2004). Defendants' burden, one of production and not of persuasion, is "exceedingly light." Smith v. Horner, 839 F.2d 1530, 1537 (11th Cir. 1988). "So long as the employer articulates 'a clear and

reasonably specific' non-discriminatory basis for its actions, it has discharged its burden of production." Vessels v. Atlanta Indep. Sch. Sys., 408 F.3d 763, 770 (11th Cir. 2005) (citation omitted).

Upon discharge of the defendant's burden, any presumption of discrimination is rebutted, and the burden of production shifts to the plaintiff to offer evidence that the alleged reason of the defendant is a pretext for illegal discrimination. Wilson, 376 F.3d at 1087; Combs v. Plantation Patterns, 106 F.3d 1519, 1538-39, 1543 (11th Cir. 1997); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 508 (1993) (quoting Burdine, 450 U.S. at 256). To demonstrate pretext, plaintiff's evidence must reveal "such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions" in defendants' proffered reason "that a reasonable factfinder could find them

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unworthy of credence." Cooper v. S. Co., 390 F.3d 695, 725 (11th Cir. 2004). Plaintiff may prove pretext by "either proving that intentional discrimination motivated the employer or producing sufficient evidence to allow a rational trier of fact todisbelieve the legitimate reason proffered by the employer, which permits, but does not compel, the trier of fact to find illegal discrimination." Wilson, 376 F.3d at 1088. Thus, a plaintiff may create an issue of fact at the pretext stage by (1) presenting evidence that the defendant's proffered reason is not worthy of belief, thereby enabling the jury to infer that discrimination was the employer's real reason, or (2) presenting evidence that discrimination was, in fact, the employer's real reason. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 146-47 (2000);

Hicks, 509 U.S. at 511. A prima facie case along with sufficient evidence to reject the employer's explanation, then, is all that is needed to permit a finding of intentional discrimination. See Reeves, 530 U.S. at 146-47; Hicks, 509 U.S. at 511; Combs, 106 F.3d at 1529. In any event, the plaintiff ultimately must show that the employer discriminated against him because of his protected characteristics. See Hicks, 509 U.S. at 507; Burdine, 450 U.S. at 253. With these standards in mind, the Court turns to the merits of plaintiff's claims.[24]

24 Plaintiff alleges in his fifth claim that at unspecified times, defendants discriminated against him on the basis of his national origin, race, and color when he was denied "assignment opportunities, which were advertised by his lab director and for which he was, on many occasions, strongly

recommended by his supervisor." [Doc. 18 ¶ 5; Doc. 61-20, Ex. 24 at 29 (e-mail 4/20/05); Doc. 61-3 ¶ 18].

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a. Plaintiff's Discrimination Claims Regarding the Failure of Other GTRI Labs to Provide Work for Him

Plaintiff's tenth claim pertain to his supervisor's unsuccessful efforts to obtain positions for plaintiff within RSD and SENSIAC. Plaintiff alleges that he was discriminated against on the basis of his national origin, race, color, and sex when his supervisor, Harris, found other positions for him in the same laboratory, and he was "abruptly terminated" from these assignments on February 20, 2006. [Doc. 18 ¶ 10]. Plaintiff alleges that these assignments were "committed to him for several

months with promised [sic] to absorb his services full time," but then were retracted. [Id.].

Defendants contend that plaintiff has failed to establish a prima facie case with respect to obtaining an assignment with RSD because he has not shown that similarly situated employees outside any of his protected classes received more favorable treatment, and the Court agrees. However, even if plaintiff could establish a prima facie case, this claim would still fail because defendants have presented a legitimate, nondiscriminatory reason that plaintiff did not obtain a position in RSD, which plaintiff has failed to refute.

Because plaintiff has not identified any specific adverse actions in this claim, these general allegations of discrimination will be addressed within the discussion of his remaining claims, and for the reasons stated herein, the undersigned

RECOMMENDS that summary judgment be GRANTED as to this claim.

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It is undisputed that Woodall, the RSD Director, was not sure how much coverage he would be able to provide when Harris initially approached him about finding work for plaintiff. [Doc. 61-15 ¶ 4; Doc. 61-3 ¶ 43; Doc. 71 ¶ 43]. There was no guarantee that RSD could provide coverage for plaintiff's employment as Woodall indicated it was contingent on funding. [Doc. 61-15 ¶¶ 6-7; Doc. 61-8 ¶ 13]. Plaintiff does not dispute the reasons given by Woodall and does not know how many hours he was initially approved for with RSD. [Doc. 64 at 312]. He even admits that "Georgia Tech was scaling down, you know, because of financial reasons and so on." [Id. at 407]. Plaintiff

has presented no evidence that his national origin, race, color, or sex played any role in his not obtaining work within RSD. Thus, plaintiff has failed to create a genuine issue of material fact that defendants' proffered reasons were pretextual and that discrimination was the real reason for his not obtaining a position in RSD.[25] White v. Miss. State Oil & Gas Bd., 650 F.2d 540,

25 Plaintiff refers to a "promise" made to him for assignments in both RSD and SENSIAC, but he points to no evidence in the record indicating that any promise was made, least of all a promise made by someone with authority to guarantee him "permanent work, a list of assigned duties, or a fixed number of hours that could be billed to their work group." [Doc. 61-2 at 7, 28-29; see also Doc. 61-15 ¶¶ 6-7; Doc. 61-8 ¶ 13].

544 (5th Cir. 1981)[26] (finding that limited funds and the elimination of a position because it was no longer needed were legitimate, nondiscriminatory reasons).

Defendants also contend that plaintiff has failed to establish a prima facie case of discrimination regarding his not obtaining a position within SENSIAC. Plaintiff performed some assignments for SENSIAC, and he alleges that defendants failed to hire him for the "coordinator of multiple duties for SENSIAC." [Doc. 18 at ¶10]. However, plaintiff admits that this was not an advertised position with a code number for which he actually applied. [Doc. 64 at 286]. Harris was seeking additional assignments for plaintiff to continue his employment after losing

funding for plaintiff's position in MNG, and Batchelor, who had decision-making authority for SENSIAC, never provided plaintiff with a list of assigned duties or guaranteed him a fixed number of hours. [Doc. 61-5 ¶ 5; Doc. 61-8 ¶¶ 14-15]. Thus, Georgia Tech did not "fail to hire" plaintiff for this position. Plaintiff likewise has not demonstrated that he was replaced at SENSIAC by someone outside his protected class or treated less favorably than others who were outside his protected class but similarly situated to him in "'all other respects.'" Wilson, 376 F.3d at 1091 (quoting Holifield, 115 F.3d at 1562). Plaintiff admitted he did not know if anyone took over his responsibilities at SENSIAC after Batchelor

26 Decisions of the Fifth Circuit rendered before October 1, 1981, are binding precedent in the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

decided not to provide him with a long-term assignment. [Doc. 64 at 291]. He mentioned a woman and a co-worker's son who began working for SENSIAC in February 2006, but he did not know their qualifications, their positions at SENSIAC, or their job duties. [Id. at 291-93]. Thus, plaintiff is unable to establish that they were similarly situated to him.

Even if plaintiff were able to establish a prima facie case regarding the SENSIAC assignment, defendants have articulated a legitimate, nondiscriminatory reason for not providing plaintiff with continuing coverage. After reading plaintiff's December 25, 2005

memorandum, Batchelor determined that he would not be a positive or productive addition to her staff because she believed plaintiff harbored animosity toward women, and, given her experience in the industry and the fact that she managed a small staff composed mainly of women, she was uncomfortable with the idea of placing him in her group. [Doc. 61-5 ¶ 12; Doc. 61-3 ¶¶ 54, 56]. Batchelor believed that plaintiff's comparison of GTRI with the "brutal regime of Papa Doc, his Tonton Macoute and the Boogie Man," [Doc. 61-5 ¶ 13], also "crossed the boundaries of [professionalism], which is especially important considering the sensitive, classified nature of the work performed at SENSIAC." [Id. ¶¶ 13-14]. Plaintiff attempts to show that he did not harbor any animosity or resentment toward the "triumvirate" of women he referred to in the memorandum. [Doc. 71 ¶

54]. He also claims that his comparisons to the "Tonton Macoute of the regime of

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Papa Doc" did not evidence a lack of professionalism. [Id. ¶ 55]. Plaintiff's arguments, however, do not prove pretext or that Batchelor was motivated by discriminatory intent or animus. When an employer makes a decision for a legitimate, nondiscriminatory reason, even if that reason is based on a mistaken belief, the employer is not subject to Title VII liability. See Robinson v. LaFarge N. Am., Inc., 240 Fed. App. 824, 827 (11th Cir. 2007); E.E.O.C. v. Total Sys. Servs, Inc., 221 F.3d 1171, 1176 (11th Cir. 2000); Moore v. Sears, Roebuck & Co., 683 F.2d 1321,1323 n.4 (11th Cir. 1982). Thus, even if Batchelor was mistaken in her assessment of plaintiff's views on

women and GTRI, plaintiff has not shown that her beliefs were a pretext for discrimination or that he was discriminated against on the basis of his national origin, race, color, or sex. Accordingly, the undersigned RECOMMENDS that summary judgment be GRANTED on plaintiff's tenth claim.

b. Plaintiff's Retaliation Claim Plaintiff's ninth claim alleges that he was subjected to unlawful retaliation in violation of Title VII when commitments that he contends had been made to him for positions in other GTRI labs and the GTRI Director's office[27] were withdrawn because he did not rescind the December 25 memorandum from his personnel file 27 The reference to the GTRI Director's Office apparently pertains to the work plaintiff did for RSD, as plaintiff states that he was issued "Director's Office internal

project No H-2300-444" after Cross approved plaintiff's assignment with RSD. [Doc. 1 at 17].

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Case 1:07-cv-00109-CC Document 73 Filed 07/31/2008 Page 36 of 54 and because he did not withdraw a discrimination charge he filed against defendants. [Doc. 18 ¶ 9]. Title VII prohibits an employer from "discriminat[ing] against" an employee because the individual "opposed any practice" made unlawful by Title VII. See 42 U.S.C. § 2000e-3(a). Title VII also prohibits retaliation against an employee "because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). To establish a prima facie case of retaliation, plaintiff must show that (1) he engaged in a statutorily protected activity;

(2) he suffered a materially adverse action; and (3) there is a causal connection between the protected activity and the adverse action. Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006); Hurlbert v. St. Mary's Health Care Sys., Inc., 439 F.3d 1286, 1297 (11th Cir. 2006); Brochu v. City of Riviera Beach, 304 F.3d 1144, 1155 (11th Cir. 2002); Sullivan v. Nat'l R.R. Passenger Corp., 170 F.3d 1056, 1059 (11th Cir. 1999); Meeks v. Computer Assocs. Int'l, 15 F.3d 1013, 1021 (11th Cir. 1994).

(i). December 25 Memorandum

Ordinarily, an employee's internal complaint to his employer is examined as protected activity under the opposition clause of Title VII's retaliation provision. See, e.g., Total Sys. Servs., Inc., 221 F.3d at 1174 & n.3; Rollins v. Fla. Dep't of Law Enforcement, 868 F.2d 397, 400 (11th Cir. 1989). "An informal

complaint, such as [p]laintiff's letters to [d]efendant, may be protected by the anti-retaliation clause of

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the statute." Chestang v. AAA Auto Club South, Civil Action File No. 1:06-CV-0999-AJB, 2007 WL 1450399, at *13 (N.D. Ga. May 14, 2007). However, in order for an employee engaging in opposition activity to be protected under the anti-retaliation provision of Title VII, he must be opposing conduct that is made an "unlawful employment practice" by Title VII.[28] Id. In order to show that the employee engaged in protected activity, he must show that he "either voiced some opposition to race discrimination or participated in some proceeding concerning an allegation of race discrimination." Holiness v. Moore-Handley, Inc., 114 F. Supp. 2d 1176, 1186 (N.D. Ala.

1999). In this regard, a plaintiff must place the employer on notice that he is complaining of unlawful practices. See Reynolds v. Golden Corral Corp., 106 F. Supp. 2d 1243, 1253-54 (M.D. Ala. 1999).

In the present case, plaintiff has failed to establish a prima face case of retaliation with respect to any alleged adverse action defendants may have taken based on the December 25 memorandum because that memorandum did not constitute protected activity. Plaintiff did not allege in the December 25 memorandum addressed to Cross that he was discriminated against on the basis of any protected status under Title VII, and it clearly did not place defendants on notice

28 Title VII defines an "unlawful employment practice" as, inter alia, discrimination against an

employee "with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).

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that he was complaining of unlawful practices under Title VII. [See Doc. 64, Ex. 24]. See also Dupont-Lauren v. Schneider (USA), Inc., 994 F. Supp. 802, 823 (S.D. Tex. 1998) ("An employee's statement cannot be deemed to be in opposition to an unlawful employment practice unless it refers to a specific practice of the employer that is allegedly unlawful."). Rather, plaintiff complained about what he perceived to be discriminatory behavior by his supervisor, as well as others, based on his being "too rhetorical and

philosophical at times." [Doc. 64, Ex. 24 at 15]. Such activity, however, is not protected under Title VII. See Coutu v. Martin County Bd. of County Comm'rs, 47 F.3d 1068, 1074 (11th Cir.1995) (finding unfair treatment, absent discrimination based on race, sex, or national origin, is not an unlawful employment practice under Title VII, and a grievance void of those allegations does not constitute protected activity); Chevola v. Cellco P'ship, No. 8:06-cv-1312-T-30MAP, 2008 WL 298993, at *14 (M.D. Fla. Feb. 1, 2008) (plaintiff's numerous complaints did not constitute protected activity where there was no evidence that her allegations of discrimination, unfair treatment, and/or favoritism were based on age, sex, disability, or any other unlawful basis); Chestang, 2007 WL 1450399, at *13 (finding that because plaintiff did not reference either race or age in any of his communications with defendant prior to

his termination, plaintiff's letters were not protected activity under Title VII). See also Hunt v. Neb. Pub. Power Dist., 282 F.3d 1021, 1028-29 (8th Cir. 2002) (plaintiff's complaints that she was entitled to a pay

increase and change in job title not protected activity without corresponding complaint that her employer's failure to give her these benefits was attributable to sex discrimination); Genosky v. Minnesota, 244 F.3d 989, 993 (8th Cir. 2001) (complaints of unfair treatment not equivalent to complaints about unlawful discriminatory treatment); Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 262 (1st Cir. 1999) (no protected activity where plaintiff complained of supervisor's treatment but never stated a belief that it violated Title VII or any other

law); Barber v. CSX Distribution Servs., 68 F.3d 694, 702 (3d Cir. 1995) (general complaints about unfair treatment without alleging that the employer engaged in unlawful discriminatory conduct are not protected activity); Crumpton v. St. Vincent's Hosp., 963 F. Supp. 1104, 1119 (N.D. Ala.1997) ("In order to be protected activity, plaintiff must present evidence showing that [the defendant] knew that her concern or complaints related in some way to race and a claim of being discriminated against on that basis."). Therefore, plaintiff's December 25, 2005, memorandum does not constitute protected activity under Title VII, and any adverse action plaintiff may have experienced based on the December 25 memorandum cannot establish a retaliation claim in violation of Title VII.

(ii). GCEO Charges Plaintiff also alleges that commitments he had received for other positions

within GTRI were withdrawn in retaliation for his not withdrawing a discrimination

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charge, but he does not specify which charge he contends was the basis for the retaliation. [Doc. 18 ¶9]. The Court presumes plaintiff is referring to one or more of his GCEO charges, and such a charge alleging discrimination based on national origin, race, color, and sex would constitute protected activity under Title VII.

However, plaintiff still fails to establish a prima facie case of retaliation because he has not shown a causal connection between the protected activity and any adverse action.

In proving the causal connection, a plaintiff must show that "the protected activity and the negative employment action are not completely unrelated." Pennington v. City of Huntsville, 261 F.3d 1262, 1266 (11th Cir. 2001) (internal marks and citation omitted); Wideman v. Wal-Mart Stores, Inc., 141 F.3d 1453, 1457 (11th Cir. 1998) (same); Holifield, 115 F.3d at 1566 (quoting E.E.O.C. v. Reichhold Chems., Inc., 988 F.2d 1564, 1571-72 (11th Cir. 1993)) (emphasis omitted). Part of this showing requires plaintiff to produce proof sufficient to create a reasonable inference or genuine issue of material fact that the decision-maker knew that he engaged in protected conduct prior to taking action against him. Brown v. Metro. Atlanta Rapid Transit Auth., No. 06-16434, 2008 WL 60279, at *6 (11th Cir. Jan. 7, 2008) (unpublished) (citing Clover v. Total Sys. Servs., Inc., 176 F.3d 1346, 1354 (11th Cir. 1999); Raney v.

Vinson Guard Serv., Inc., 120 F.3d 1192, 1197 (11th Cir. 1997)). See also Gupta v. Fla. Bd. of Regents, 212 F.3d 571, 590 (11th Cir. 2000), abrogated

on other grounds as recognized by Crawford v. Carroll, __ F.3d __, No. 07-11603, 2008 WL 2246677, at *9 (11th Cir. June 3, 2008); Higdon v. Jackson, 393 F.3d 1211, 1220 (11th Cir. 2004); Bass v. Bd. of County Comm'rs, 256 F.3d 1095, 1119 (11th Cir. 2001), abrogated on other grounds as recognized by Crawford, 2008 WL 2246677, at *9; Odom v. Mobile Infirmary, Civil No. 06-0511-WS-C, 2008 WL 748398, at *9 (S.D. Ala. Mar. 17, 2008). After all, "[a] decision maker cannot have been motivated to retaliate by something unknown to him." Brungart v. BellSouth Telecomms., Inc., 231 F.3d 791, 799 (11th Cir. 2000).

In addition, he must show that the protected activity and the adverse act were at least somewhat related or in close temporal proximity. Id. See also Higdon v. Jackson, 393 F.3d 1211, 1220 (11th Cir. 2004); Pennington, 261 F.3d at 1266 (articulating burden as requiring proof that the two are "not completely unrelated") (internal quotation omitted); Wideman, 141 F.3d at 1457.

Here, plaintiff fails to meet his burden of proof as to causation. As proof that he engaged in protected activity, plaintiff relies on unspecified charges he filed with the GCEO. There is insufficient proof, however, that these charges can be causally linked to any alleged adverse action. Plaintiff has not shown that either Woodall or Batchelor, the alleged decision-makers, were aware that he had filed any GCEO charges, and he has admitted that he did

know if they had ever seen any of his grievances or GCEO filings. [Doc. 64 at 326]. Because plaintiff produces no

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evidence that Woodall or Batchelor knew of the charges, he fails to show any causal connection between the protected activity and any adverse action. Cf. Taylor v. CSX Transp., 418 F. Supp. 2d 1284, 1302 (M.D. Ala. 2006); Williams v. Verizon Washington, DC, Inc., 266 F. Supp. 2d 107, 122 (D.D.C. 2003). Accordingly, the undersigned RECOMMENDS that summary judgment be GRANTED on plaintiff's ninth claim.

c. Plaintiff's Claims Regarding Other Positions

Plaintiff's final claim alleges that he was discriminated against on the basis of his race and color and retaliated against when he was not selected for thirteen positions that he applied for at Georgia Tech during 2006. [Doc. 18 ¶ 11].[29] To establish a prima facie case of discrimination based on failure to hire, plaintiff must show that (1) he was a member of a protected class; (2) he applied and was qualified for a position for which the defendant was accepting applications; (3) despite his qualifications, he was not hired; and (4) after his rejection the position remained open or was filled by a person outside his protected class. Malu v. City of Gainesville, No. 07-13625, 2008 WL 786671, at *3 (11th Cir. Mar. 26, 2008)

29 Plaintiff actually applied for seventeen positions, but four of the job opportunities were cancelled and never filled. [Doc. 61-3 ¶ 77; Doc. 71-1 ¶ 77; Doc. 61-

12 ¶ 17]. Plaintiff has not presented any argument regarding these positions, so the Court will only address the remaining thirteen positions.

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(unpublished); Schoenfeld v. Babbitt, 168 F.3d 1257, 1267 (11th Cir. 1999); Welborn v. Reynolds Metals Co., 810 F.2d 1026, 1028 (11th Cir. 1987). Defendants maintain that plaintiff did not meet the minimum qualifications for eight of the positions for which he applied, and plaintiff has not contested this argument. Therefore, plaintiff has failed to establish a prima facie case of discriminatory non-selection for the positions of Project Coordinator II (Digital Initiatives), Preventative Maintenance Project Manager, Program Coordinator II in the Electrical &

Computer Engineering Department, Project Coordinator I under the Provost and Executive Vice President for Academic Affairs, Computer Services Specialist, Program Manager for the Tennenbaum Institute, and Project Manager in the Office of Organizational Development.

Defendants acknowledge that plaintiff met the minimum qualifications for five of the positions for which he applied, but contend that even if he is able to establish a prima facie case of discrimination based on his non-selection for these positions, they have offered legitimate, nondiscriminatory reasons for choosing other candidates over plaintiff, and plaintiff has not rebutted defendants' reasons with evidence of pretext. See Kelliher v. Veneman, 313 F.3d 1270, 1275 (11th Cir. 2002); Howard, 2008 WL 1947094, at *2. The Project Coordinator I position

(CEW 5222) was a position within GTRI, and Terry Bridges was the Hiring Manager, and Jim Beisner was the Human

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Resources Representative. [Doc. 64 at 369]. This position required four or more years of job-related experience and a "preference for working knowledge of various government forms and the ability to read and understand sponsored contracts as they relate to research property." [Doc. 61-7 ¶ 4 & Ex. 1; Doc. 61-3 ¶ 81]. The position was filled by another applicant, Palla Smith, after plaintiff was rejected for it. [Doc. 61-3 ¶ 82]. Defendants maintain that Smith was selected to fill the position on April 20, 2006, based on her "experience in a university setting and experience working closely with contracts, including

monitoring and closing out contracts." [Doc. 61-7 ¶ 6 & Ex. 2; Doc. 61-3 ¶ 82]. Defendants further maintain that plaintiff had "less relevant job experience than the candidate of choice; specifically, he lacked experience managing contracts and subcontracts." [Doc. 61-7 ¶ 6; Doc. 61-3 ¶ 83].

Here, the evidence shows that Bridges, the Hiring Manager for this position, believed that during Smith's interview, she "established that she possessed the ability to interpret contracts as they relate to property." [Doc. 61-7 ¶ 6]. Smith had worked at Emory University as an Assistant Research Administrator for approximately 1.5 years before being hired by Georgia Tech. [Id. at Ex. 2]. Her experience in that position included generating award notices for grants and awards; ensuring compliance approvals were active; handling close-out

requirements for routine projects; and ensuring execution of routine extensions or

amendments to awarded projects as requested by faculty and departments or as sent from agencies. [Id.]. Before being promoted to Assistant Research Administrator, she had worked as an Administrative Assistant at Emory from September 1999 to September 2004; among other things, her duties included processing subcontracts; and coding and purging proposals. [Id.]. From 1997 to 1999, she had worked as a Senior Secretary at Emory, where her duties also included processing subcontracts. [Id.]. Thus, Smith accounted for more than seven years of working with and processing contracts and subcontracts, and defendants have established a

legitimate, nondiscriminatory reason for hiring her over plaintiff.

Plaintiff has not rebutted defendants' reasons for selecting Smith with evidence of pretext. "[U]nless a plaintiff's qualifications are obviously superior to those of the candidate who was hired, the court will not find evidence of pretext in an organization's failure to hire an equally qualified candidate." Gee-Thomas v. Cingular Wireless, 324 F. Supp. 2d 875, 886 (M.D. Tenn. 2004) (citing Millbrook v. IBP, Inc., 280 F.3d 1169, 1180 (7th Cir. 2002)). See also Deines v. Tex. Dep't of Prot. & Reg. Servs., 164 F.3d 277, 280 (5th Cir. 1999) (holding that it is not the function of the jury to second-guess the employer's judgment as to who is best qualified to fill a position or even to weigh the qualifications of the applicants); Lee v. GTE Fla., Inc., 226 F.3d 1249, 1255 (11th Cir. 2000)

(in a sex discrimination case based on failure to promote, plaintiff did not establish that she was more qualified than the chosen

candidate, "let alone so clearly more qualified for the position than [the other employee] that a reasonable juror could infer discriminatory intent from the comparison").

Plaintiff has not shown that he was "so clearly more qualified" than Smith that discrimination would have to be inferred. Lee, 226 F.3d at 1255. Plaintiff claims that he has been involved in real property transfer transactions, was "very familiar with real property acquisitions, title search, and custodial transfer,

transfer of title and closings procedures," and had "licenses to market life insurance and securities." [Doc. 71 ¶ 82]. He alleges that he has negotiated and signed contracts with various contractors and sub-contractors on new and on rehabilitative constructions." [Id.]. Plaintiff also contends that, during his career with the United States Air Force, he "had opportunities to complete many DOD forms and is familiar with the web site location to access them and their respective reporting instructions." [Id.; Doc. 71-2, Ex. 46 at 68-81]. However, plaintiff admitted in his deposition that he did not have experience with Government Forms 1162, 1149, 1018, and FAR and DFARS, which is knowledge GTRI preferred in its candidates. [Doc. 64 at 372-73]. Plaintiff also admitted that he did not have four years' experience in interpreting, monitoring, and closing out property contracts. [Id. at 373].

Additionally, plaintiff has not attached a copy of the application and resume he uploaded for this position, and his Biographical Sketch and application submitted

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for other positions do not demonstrate any real experience with contracts. He included in the first paragraph of the Sketch that he had worked on "numerous projects by conducting analytical experiments and performing CVD or CVI applications on research contracts sponsored by DOD or DOE." [Doc. 64, Ex. 1]. He did not show that he had actually processed or interpreted those contracts, nor did he show that this information was uploaded to his application so that hiring managers would have been aware of these experiences.[30] Although

plaintiff's arguments suggest that he had experience reading and/or interpreting contracts, he has not clearly shown that he had more experience than Smith (and indeed, he admitted that he did not in his deposition), nor has he shown that defendants would have been aware of all of his experience based on his application and resume. Thus, plaintiff has not created a genuine issue of material fact regarding his non-selection for this position.

Plaintiff also applied for the Utilities Superintendent position (CEW 5056), which required eight or more years of job-related experience, including managing, scheduling, and planning operation and repair functions associated with utilities and building systems; developing, scheduling, and executing utility and building

30 The copies of plaintiff's online applications that he has attached mention no other experience with contracts, except that he had "[m]arketed garments at the wholesale level to retail clothing stores . . . by direct contract and through regional trade shows, 1976-1980." [Doc. 64, Ex. 42].

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system PMs; and acting as an interface with utility companies on service issues. [Doc. 61-11 ¶¶ 3-4 & Ex. 1; Doc. 61-3 ¶ 97]. Plaintiff was qualified for the position, as defendants concede, [Doc. 61-3 ¶ 100], but he has not shown that a person outside his protected classes of race, gender, or national origin was chosen. The applicant chosen, Kourosh Charepoo, [Doc. 61-11 ¶ 6], was a male, like plaintiff,

and plaintiff has not shown that Charepoo was not a member of any of plaintiff's other protected classes.[31]

Even if plaintiff could establish a prima facie case, however, defendants have articulated a legitimate, nondiscriminatory reason for not hiring him. Defendants assert that Charepoo was chosen over plaintiff because plaintiff did not have any facilities management experience and had less job-related experience than the chosen candidate, and plaintiff admits his lack of experience. [Doc. 61-11 ¶¶ 8, 6 & Ex. 2; Doc. 61-3 ¶¶ 98, 100; Doc. 64 at 376-77]. Defendants state that Charepoo had twenty-five years' of "stable work experience in progressive roles for this position, university and government experience, and a proven performance track record in positions within facilities at Georgia Tech." [Doc. 61-11 ¶ 6 & Ex. 2; Doc. 61-3 ¶¶ 9899]. Plaintiff again

does not contest these claims, except to assert that the information related to this position is irrelevant. [Doc. 71 ¶¶ 96-100]. These facts are

31 Because Georgia Tech does not ask for information regarding race or national origin in its hiring process, such information is not available in the record.

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thus deemed admitted, and because the uncontested evidence does not establish that plaintiff was clearly superior to the selected candidate, plaintiff has not established pretext regarding his non-selection for this position.

For the remaining three positions at issue, defendants have articulated as a legitimate,

nondiscriminatory reason for the challenged hiring decision that the person selected was better qualified, and plaintiff has not attempted to rebut the proffered reasons. Instead, plaintiff merely claims that the reasons proffered for his non-selection for these positions are now irrelevant. [Doc. 71 ¶¶ 85-95]. These facts are thus deemed admitted, and because the uncontested evidence does not establish that plaintiff was clearly superior to the selected candidate, plaintiff has not established pretext regarding his non-selection for these positions.

Rebecca Miller[32] was selected for the position of Program Coordinator II (CEW 5431), which required four years of related experience in an administrative setting and a preference for experience with international education (in professional and personal

capacities) in a university environment. [Doc. 61-9 ¶ 4 & Ex. 1; Doc. 61-3 ¶ 85]. Miller was selected on or around July 24, 2006, because she was obtaining a Masters in International Education and "possessed a significant amount of job related experience, including working for the Semester at Sea program and a

32 Plaintiff has not shown that Miller was white or of United States origin, and because Georgia Tech does not ask for such information in its hiring process, it is not available in the record.

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university study abroad program." [Doc. 61-9 ¶ 6 & Ex. 2; Doc. 61-3 ¶ 86]. Miller had more educational and related experience than plaintiff, and plaintiff

admits his lack of experience. [Doc. 61-9 ¶¶ 6, 8; Doc. 61-3 ¶ 87; Doc. 64 at 384].

Felicia Trezza[33] was selected for the Facilities Manager position (CEW 5274), which required four years of job-related experience and computer skills in event management systems (EMS); it also required knowledge of "space utilization and building management," and a "preference for experience in other areas of marketing/development and supervisory/management." [Doc. 61-14 ¶¶ 3-4 & Ex. 1; Doc. 61-3 ¶ 89]. Trezza had eleven years of experience in event coordination, and extensive knowledge of EMS software and facilities management. [Doc. 61-14 ¶ 6 & Ex. 2; Doc. 61-3 ¶ 90]. Although plaintiff met the minimum qualifications for this position, he had "less job related experience than the selected candidate and lacked specific functional experience in event

management." [Doc. 61-14 ¶ 8; Doc. 61-3 ¶ 91; Doc. 64 at 377-78].

Chatele Chester was selected for the Program Coordinator I position (CEW 5226) in the Housing Office, a position that required four years of job-related experience and a "preference for experience in marketing/development, office management or the apartment management industry, and working knowledge of

33 Plaintiff has not shown that Trezza was white or of United States origin, and because Georgia Tech does not ask for such information in its hiring process, it is not available in the record.

Banner and Room Management systems." [Doc. 61-13 ¶¶ 3-4 & Ex. 1; Doc. 61-3 ¶ 93]. Chester had a "Master's degree in Education Management" and "past experience in a similar position in the Department of Housing." [Doc. 61-13 ¶ 6 & Ex. 2; Doc. 61-3 ¶ 94]. Defendants assert that plaintiff had less or no experience in property management and family housing, and plaintiff admits his lack of experience in that area. [Doc. 61-13 ¶ 8; Doc. 61-3 ¶ 95; Doc. 64 at 374]. Accordingly, defendants are entitled to summary judgment on all of plaintiff's claims of discriminatory non-selection.

Plaintiff also alleges that he was retaliated against when he did not receive offers or interviews for any of the fourteen positions that he applied for at Georgia Tech. [Doc. 18 at 5]. In his fourth GCEO charge, he alleged that he was unlawfully retaliated against for

appealing his December 5, 2005, dismissal letter, and for filing a "13 January 2006 retaliation charge against them for retracting and cancelling funding that were [sic] to support my salary after 31 January 2006." [Doc. 64, Ex. 39].[34] Even if the Court assumes plaintiff can meet the first two elements of a prima facie case of retaliation with regard to the "retaliation charge" – (1) that he took

34 Plaintiff refers to his appeal of his termination filed with Neely and the Board on December 19, 2005. [Doc. 61-19, Ex. 23 at 20]. The January 13 retaliation that plaintiff refers to is presumably the third GCEO charge, filed on February 14, 2006, because this was the first charge alleging unlawful retaliation. Plaintiff had written a memorandum to Harris and Myers on January 13, 2006, but it

consisted only of an apology for not informing them of the appeal. [Doc. 61-21, Ex. 25 at 2].

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protected actions by filing GCEO charges, and (2) that he suffered an adverse employment action by not being hired for the other positions – he still has not established the required causal connection.

As previously stated, in order to show that the protected activity and adverse action are not completely unrelated, plaintiff must produce proof sufficient to create a reasonable inference or genuine issue of material fact that the decision-maker knew that he engaged in protected conduct prior to taking action against him. Brown v. Metro. Atlanta Rapid Transit Auth., No. 06-16434, 2008 WL 60279, at *6

(11th Cir. Jan. 7, 2008) (unpublished) (citing Clover, 176 F.3d at 1354). Here, plaintiff presents no evidence that any of the hiring managers for these positions were aware of any of his grievances or GCEO charges, and the online application process that plaintiff completed for each of these positions did not ask for information related to any protected activities. [Doc. 61-12 ¶ 4; Doc. 61-2 at 26]. Plaintiff testified that Pearl Alexander ("Alexander") in the Office of Human Resources asked him if he would be willing to remove a document (the December 25 memorandum) from his personnel file as a "bargaining chip" to gain employment with the other offices. [Doc. 64 at 391-93]. However, Alexander's statement does not demonstrate that she was attempting to punish plaintiff for having the document in his file or that her actions would have influenced other hiring managers, or that they were

even aware of the document in the first place. Thus, plaintiff cannot establish a causal

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connection between his non-selection and the protected activity in which he engaged, and the undersigned RECOMMENDS that summary judgment be GRANTED on the eleventh claim of plaintiff's amended complaint. See Taylor, 418 F. Supp. 2d at 1302; Williams, 266 F. Supp. 2d at 122.

C. Plaintiff's State Law FEPA Claims Plaintiff's amended complaint asserts state law claims under FEPA, O.C.G.A. § 45-19-20 et seq., but the parties have not addressed these claims on summary judgment. The Court has discretion to retain supplemental jurisdiction over plaintiff's state law

claims. See 28 U.S.C. §1367; United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). However, because the parties have not addressed the merits of these claims and summary judgment is recommended on all of plaintiff's other claims, the undersigned RECOMMENDS that such jurisdiction be declined in the interest of judicial economy. See Cochran v. Collins, 253 F. Supp. 2d 1295, 1308 (N.D. Ga. 2003).

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IV. CONCLUSION

For all the foregoing reasons and cited authority, the undersigned GRANTS plaintiff's motion to strike his voluntary dismissal, [Doc. 51], and RECOMMENDS that defendants' motions for summary judgment,

[Docs. 46, 61], be GRANTED in their entirety. The Clerk is DIRECTED to terminate this reference.

IT IS SO ORDERED AND RECOMMENDED, this 31st day of July, 2008.

RUSSELL G. VINEYARD

UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

GÉOVING JOSEPH GÉRARD,

Plaintiff,

v.

BOARD OF REGENTS OF THE STATE

OF GEORGIA, et al

Defendants

CIVIL ACTION NO

1:07-CV-00109-CC-RGV

ORDER FOR SERVICE OF REPORT,

RECOMMENDATION, AND ORDER

Attached is the Report, Recommendation, and Order of the United States Magistrate Judge made in this action in accordance with 28 U.S.C. § 636(b)(1), FED.

R. CIV. P. 72(b), and this Court's Local Rule 72. Let the same be filed and a copy,

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together with a copy of this Order, be served upon counsel for the parties. Pursuant to 28 U.S.C. § 636(b)(1), each party may file written objections, if any, to the Report and Recommendation within ten (10) days of the receipt of this Order. Should

objections be filed, they shall specify with particularity the alleged error or errors made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the district court. If no objections are filed, the Report and Recommendation may be adopted as the opinion and order of the district court and any appellate review of factual findings will be limited to a plain error review. United States v. Slay, 714 F.2d 1093 (11th Cir. 1983).

The Clerk is directed to submit the Report and Recommendation with objections, if any, to the district court after expiration of the above time period.

IT IS SO ORDERED, this 31st day of July, 2008.

RUSSELL G. VINEYARD

UNITED STATES MAGISTRATE JUDGE

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APPENDIX No.3

Exhibit # 49

Thanks!
Steve

From: geoving gerard [mailto:geoving.gerard@gtrLgatech.edu]
Sent: Monday, January 23, 2006 10:24 PM
To: Harris, Mike; Woodall, Stephen E.
Subject: RE: Additional Support for Inventory

Good morning Mike and Steve,

Mike, I thank you for the confidence you have placed in me to do a great job. Once trained on how to carry out the duty, you can rest assured that I'll put my best foot forward and aim high if only to uphold the confidence you have entrusted in me. In retrospect, I only wish such avenues were pursued prior to the infamous Monday of 05 December 05. That way,

there wouldn't have been so many sleepless nights, long worrisome days, contiguous stressful hours, deep soul searching and heart wrenching decisions to say the least. Nonetheless, without questioning, we both know God holds the answers.

Steve, I thank you for seeking Dr. Cross' approval. Ms. Franklin's slogan during her initial candidacy for the Atlanta Mayoral office was "you make me Mayor, I'll make you proud".

By analogy, you have chosen me; I'll strive to deliver a product that will surpass your expectation.

Sincerely,

At 07:31 AM 1123/2006, Mike.Harris@gtri.gatech.edu wrote:

Steve,

Thanks for your help with this. I am confident that Geoving will do a great job for you.

Regards,

From: Woodall, Stephen E.
Sent: Friday, January 20, 20063:47 PM
To: RSD-MAIL
Cc: Gerard, Geoving J.; carolyn Perdue; 'Mike_Harris'; Bob Trebits
Subject: Additional Support for Inventory Dr. Cross has approved our employment of Geoving Gerard and Carolyn Perdue to support the document inventory. They will be charging to H-2300-444. Geoving sits in Baker Building and will also be supporting SENSIAC. Carolyn is from CCRF. Bill Gregory has already begun the coordination and training process with Carolyn, Bernie, if you would be kind enough to get Geoving into the mix, I would appreciate it. His office is on the first floor. Geoving is located in Baker room 120 and his telephone number is 404/894-4439. Geoving's experience with classified is with the Air Force Reserves, but he is used to meticulous record keeping so the inventory process should be right up his alley.

Dr. Cross has again clearly emphasized the importance of completing the inventory. Beginning 31 January, I will be updating him every two weeks on our status.

Thanks to all of you for your help and support.

Steve

Life is time. At least, try to do everything correctly the first time, to get more out of life.

Geoving

Have a nice day,

Sincerely,

Geoving J. Gerard
Program Coordinator I
GTRI/EOEML
120 Baker Building @
925 Dalney Street
Atlanta, Georgia 30332-0826

Voice: (404) 894-4439
Facsimile: (404)894-5073
Internet: http://eoeml.gtri.gatech.edu

APPENDIX No.4

Exhibit # 28

To: Janice Rogers <janice.rogers ...snip... hal.irvin@success.gatech.edu> From: geoving gerard <geoving.gerard@gtri.gatech.edu> Subject: Re: GTRI rep on chemical management project Cc: Mike Harris, Marita_Sullivan ...snip... gatech.edu>, Gary_Caille

Good morning Janice,

Today, I went to my first meeting. No member other than Marita Sullivan and Deborah WolfeLopez came to the meeting. So the ladies, with my agreement, gave me a history on the project, which by the way, I was told is not a focus group. It is an actual project, borne out of a failed EPA safety inspection regarding the way the institute has handled its chemicals in the past. They seem eager to have me as the missing link, (GTRI), to their puzzle.

I hope to be able to bring about something positive to their objective.

The project is about coming up with the best way to safely manage the acquisition, distribution, storage, disposal and to file quasi accurate semi-annual reports on chemicals in the GT system... The project is currently looking to acquire, under the auspice of UGA, an online package, co-developed by Safeco and UGA, to benefit mostly university systems in their quest of better management of chemicals on their campus. Thus, there is a planned field trip to UGA in the near future to see the proposed package (live) post the latest implementation it has recently undergone... The project plans to utilize its members for about one day per month until the end of the year.

Today, including travel time, I have spent 1 hour and 50 minutes on the project. Would you, kindly,

give me a charge number to use for today, subsequent meetings and proposed field trip(s) to UGA? I will keep you abreast on the progres, suggestions, if any, that I'll make on behalf of GTRI and the outcome.

At 04:50 PM 8/3/2004, Janice Rogers wrote: Hal --as I said in my voice mail message to you, I am embarrassed that I never closed the loop with you on this. GTRI submits the name of Geoving Gerard as our candidate to serve on your focus group for chemical tracking issues. Geoving is the most experienced individual in GTRI with the "cradle to grave" process of purchasing, possession, and disposition of chemicals. Geoving can be reached at geoving.gerard@gtrLgatech.edu or at 4.4439.

Geoving –I had asked Ken several weeks ago, if you would be willing to assist Hal Irvin in this

focus group, so I trust that Ken had mentioned it to you. My office will be able to cover your time spent on this effort. After you and Hal have had a chance to talk about the scope of his effort, please let me know how much time you expect to expend on this project. I will provide a charge number. In advance, thank you for helping Hal out with this effort.

At 02:34 PM 8/3/2004 -0400, you wrote: Janice-Have you and Ken Johnson had any luck identifying someone to represent GTRI on our chemical management project team? We want someone who buys and uses chemicals in a lab and someone who can interface with other people in GTRI with similar functions. This could be a right to know coordinator from a lab, a research scientist, or a lab tech. I left a

message for you and would be glad to talk more about it with you. Thanks Hal

++++++++++++++++++++++++++++++++++

Hal Irvin, Ph.D. Executive Director of Organizational Development Georgia Institute of Technology 631 Cherry Street, Savant Building Atlanta, GA 30332-0206 Phone: 404-894-1099 Fax: 404-894-0409 For our training schedule, please see www.training.gatech.edu For our internal consulting services, please see www.consulting.gatech.edu

Printed for geoving <jeanphoeta@bellsouth.net>

9/28/2007

APPENDIX No.5

REFERENCES

1. **Robinson, 519 U. S., at 316**
2. **McDonnell Douglas Corp. V. Green, 411 U. S. 792, 800-801 (1973)**
3. **Rochon v. Gonzales, 438 F.3d, at 1213** (FBI retaliation against employee "took the form of the FBI's refusal, contrary to policy, to investigate death threats a federal prisoner made against the agent and his wife"
4. **Rochon v. Gonzales, 438 F.3d, at 1219** (quoting Washington F. 3d, at 662) on the count that the Supreme Court agreed with a formulation set forth by the Seventh and the District of Columbia Circuits that (A plaintiff must show that a reasonable employee would have found the challenged action materially adverse, "which in this context means it well

might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'"

5. **Berry v. Stevinson Chevrolet, 74 F. 3d 980, 984, 986 CA10 1996)** (finding actionable retaliation where employer file false criminal charges against former employee who complained about discrimination)
6. **29 U.S.C. § 158 (a)(4)** (retaliation provision making it unlawful for an employer to "discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter")
7. **NLRB v. Scrivener, 405 U.S. 117, 121-122 (1972)** (purpose of the anti retaliation provision is to ensure that employees are "completely free from coercion against reporting" unlawful practices).

8. **Mitchell v. Robert DeMario Jewelry, Inc., 361 U. S. 288, 292 (1960)** "Plainly, effective enforcement could thus only be expected if employees felt free to approach officials with their grievances."
9. **Washington v. Illinois Dept. of Revenue; 420F. 3d 658, 662 (CA 7 2005).**
10. **05-1074 Ledbetter V. Goodyear Tire & Rubber CO. 421 F3d 1169 (6/26/2006)**
11. **Burlington Northern & Santa Fe Railway Co. V. White, No. 05-259 (June 22, 2006)** U.S. Supreme Court resolved the disagreement in favor of enhanced legal protection against retaliation for employees who report unlawful discrimination by endorsing a broader definition of retaliation. The court held that any "materially adverse" action by the employer that "might have

dissuaded a reasonable worker" from reporting discrimination will constitute prohibited retaliation.